

2151 No. 14702

United States
Court of Appeals
for the Ninth Circuit

FREDERICK I. RICHMAN, Appellant,

vs.

IDA TIDWELL, ROY E. HALLBERG, as Receiver of all the real and personal property constituting the former Richman Trust, and JOHN WHYTE, attorney for Receiver, Appellees.

IDA TIDWELL, Appellant,

vs.

FREDERICK I. RICHMAN, ROY E. HALLBERG, as Receiver of all the real and personal property constituting the former Richman Trust, and JOHN WHYTE, attorney for Receiver, Appellees.

Transcript of Record

In Three Volumes

VOLUME I.

(Pages 1 to 316, inclusive.)

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als from the United States District Court for the Southern
District of California, Central Division

INDEX

Clerk's Note: When deemed likely to be of an important nature or doubtful matters appearing in the original certified are printed literally in *italic*; and, likewise, cancelled matter in the original certified record is printed and cancelled accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	PAGE
al:	
Certificate of Clerk to Transcript of Record	
n	198
vice of (Frederick I. Richman).....	196
vice of (Lyda Tidwell).....	197
Statement of Points on (Defendants and Appellants)	969
Statement of Points on (Plaintiff and Appellant)	972
of Receiver	25
Certificate of Clerk to Transcript of Record..	198
Petition to Renovate Apartments,	40
on, Memorandum of	3
Assal with Prejudice	124
and Final Report of Receiver and Petitioner for Allowance of Fees to Receiver.....	75
Schedule A—Inventory of All Known Assets	

Schedule B—(Continued)

I—Disbursements for Expenses and Obligations Incurred by F. I. Richman Prior to Receivership	108
II—Disbursements for December, 1953, Operation, Maintenance and Renovation	110
III—Disbursements for January, 1954.	113
IV—Disbursements for February, 1954	115

Schedule C—Disbursements Made by the Receiver Covering Liabilities Incurred Prior to Feb. 28, 1954, etc.....	117
--	-----

Schedule D—List of all known Creditors as of March 10, 1954	120
---	-----

Judgment for Revocation and Avoidance of Trust, and Appointment of Receiver.....	
--	--

Memorandum of Decision	
------------------------------	--

Memorandum of Points and Authorities of Plaintiff Tidwell re Pre-Trial Hearing on Distribution of Funds, etc.....	
---	--

Memorandum to Counsel re Disposition of Funds and Allowance of Fees.....	
--	--

Memorandum to Counsel re Fee of Attorney for Receiver	
---	--

Minutes of the Court:

Nov. 30, 1953—Fixing Bond and Order for Appointment of Receiver	
Dec. 2, 1953—Hearing Continued.....	

es of the Court—(Continued)

il 12, 1954—Hearing on Report of Re-	
ceiver, Petition for Allowance of Fee to	
Receiver and Receiver's Attorney.....	157
e 21, 1954—Pre-Trial Hearing re Div-	
ision of Moneys Held by Receiver.....	181
s and Addresses of Attorneys.....	1
e of Appeal, Frederick I. Richman.....	196
e of Appeal, Lyda Tidwell.....	197
e of Application and Motion for Perma-	
ent Receiver	47
hibit A—List of All Known Creditors, etc.	48
e of Hearing on First and Final Report	
Receiver on Petition for Allowance of	
s to Receiver and to Receiver's Attorney	123
tions and Answer to Report and Petitions	
Receiver and His Attorney for Fees.....	125
hibit A—Letter dated Feb. 19, 1954, Jos-	
eph T. Enright to Martin, Hahn & Camusi	139
etter dated Feb. 25, 1954—Martin, Hahn	
Camusi to Frederick I. Richman.....	143
tions of Plaintiff Tidwell to First and	
al Report of Receiver	145
e Appointing Receiver	21
e Authorizing Receiver to Employ Counsel	29
e Authorizing Receiver to Pay Christmas	

Order Extending Time for Receiver to File Report, and Petition for Instructions.....	
Affidavit of John Whyte	
Order in re Settlement of Receiver's Account, Fees and Distribution of Funds in Hands of Receiver	
Petition for Allowance of Fees to Attorneys for Receiver	
Supplemental	
Petition for Authority to Employ Counsel....	
Affidavit of John Whyte.....	
Petition for Authority to Pay Christmas Bonuses	
Petition for Authority to Renovate Apartments, etc.	
Petition to Disqualify, and Authorities.....	
Points and Authorities in Support of Plaintiff's Objections, and Reply to Defendant Rich- man's Objections	
Reply of Plaintiff to Objections of Frederick I. Richman	
Statement of Points on Appeal, Defendants and Appellants (USCA)	
Statement of Points on Appeal, Plaintiff and Appellant (USCA)	
Statement of Reasons and Points and Auth-	

ation between Lyda Tidwell and Fred-	
k I. Richman, 2/26/54	54
emental Petition for Allowance of Fees	
Attorneys for Receiver	164
cript of Proceedings:	
ember 30, 1953.....	202
ember 1, 1953	216
cript of Proceedings, Jan. 15, 1954.....	218
ness:	
allberg, Roy E.	
—direct	223
—cross	230
cript of Proceedings, April 12, 1954....	235
cript of Proceedings and Testimony,	
y 12, 13, 14, 17-June 7, 8, 1954.....	246-754
ibits for Defendants:	
Photostat of Diary Kept by Roy E. Hall-	
berg	393-404
Letter dated Jan. 22, 1954, Roy E. Hall-	
berg to Air Pollution Control, Inc. Attn.	
Mr. B. Manalis	646
-Fiduciary Income Tax Return for Rich-	
man Trust Jan. 1, 1953-Jan. 1, 1954..	675-679
ibits for Receiver:	

Exhibits for Receiver—(Continued)

- 2—Cash and Western Arms Report, Nov.
30, 1953-Dec. 31, 1953 581
- 3—Cash and Western Arms Report, Jan. 1,
1954-Jan. 31, 1954 588
- 4—Notice of Violation of Sec. 24242 of the
Health and Safety Code dated Jan. 13,
1954

Witnesses:

Byrum, Louis B.

—direct

—cross

Fussell, Paul

—direct

—cross

—redirect

Hallberg, Catherine Cosgrove

—direct

—cross

Hallberg, Roy E.

—direct 254, 267,

—cross 325, 362, 417,

—redirect

—recalled, direct

—cross

nesses—(Continued)

Hallberg, Roy E. (Deposition)

—direct	871
—cross	910
—redirect	913

Kennedy, Maude

—direct	469
—cross	476
—redirect	493, 594
—recross	502, 571

Laugharn, Hubert F.

—direct	559
—cross	567
—redirect	568

Lipphardt, Edna

—direct	503
—cross	510
—redirect	514

Manalis, Barney

—direct	701
—cross	704
—redirect	709

Mann, Jefferson A.

—direct	298
—voir dire	310

Witnesses—(Continued)

Richman, Frederick I.

—direct (Under 43b)	
—direct (Defts.) 597, 630, 635, 671,	
—voir dire	666,
—cross	
—redirect	
—recross	

Whyte, John

—direct	
—cross	550,

Whyte, John (Deposition)

—direct	
---------------	--

Transcript of Proceedings, June 18, 1954.....

Arguments, Mr. Whyte 756,

Mr. Enright

Transcript of Proceedings, June 21, 1954.....

Exhibits for Defendants:

A—Copy of Mutual Release, Lyda Tidwell to
Frederick I. Richman, et al.....

B—Dismissal with Prejudice dated March
25, 1954 124
Admitted in Evidence

C—Stipulation dated Feb. 26, 1954..... 5
Admitted in Evidence

D—Order dated Feb. 26, 1954.....

cript of Proceedings, June 21, '54—(Contd.)

ibits for Defendants—(Continued)

-Escrow Instructions, Feb. 26, 1954...799-800

-Letter Contract dated Oct. 22, 1953, Air
Pollution Control to Mr. F. I. Rich-
man 801-803

-Smog Control Permits for the Oliver
Cromwell and the Canterbury..... 805

-Letter dated Feb. 19, 1954, Martin, Hahn
& Camusi from Joseph T. Enright..... 139

Letter dated Feb. 25, 1954, Frederick I.
Richman from Martin, Hahn & Camusi. 143

Admitted in Evidence 807

cript of Proceedings:

tember 27, 1954 817

ober 12, 1954 843

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Los Angeles 14, California. [1*]

United States District Court for the Southern District of California, Central Division

No. 13,742-T.

A TIDWELL, et al.,

Plaintiffs,

VS.

DERICK I. RICHMAN, et al.,

Defendants.

MEMORANDUM OF DECISION

s is an action between Lyda Tidwell and
rick I. Richman each of whom is a trustee
rutor under a Declaration of Trust. Plaintiff
rought suit asking this Court to permit her to
he Declaration of Trust and for a distribution
e assets of the estate to the trustors. She claims
the Trust is a voidable one because of (1)
e influence in the inception; (2) fraud in the
ion; (3) fraudulent and improper manage-
and (4) that after the establishment of the
it has been fraudulently and wrongfully man-
by the defendant to such an extent that he
d be removed as agent of the trustees and the
should be terminated.

a pretrial conference the Court ordered a trial upon the single issue of whether there was influence or fraud or both which moved plaintiff to execute the Declaration of Trust. It was held by the Court that if plaintiff prevail on this issue,

accounting which would necessarily be involved. Plaintiff has objected to this procedure on the basis that a showing of certain acts of mismanagement (which she claims she is able to show) will run back to the things which were done before she executed the Trust Declaration, and will show certain privileges of management which defendant has under the Trust Declaration were in fact seized as they are in order to enable him to do the supposedly high-handed and improper acts of which she accuses him. The Order of the Court relating to the separation of issues for trial is a provision one. It provides for a trial upon the issue of validity of the Trust because of undue influence and fraud in the inception. Evidence of how the Trust has been managed since it has been created has been specifically excluded from the trial of the issue regarding undue influence and fraud in the inception. The Court has ruled that if plaintiff prevail upon the theory thus being tried, the only need to run into acts of management will be in the accounting. The ruling was that if plaintiff cannot establish a cause of action upon the theory of wrong in the beginning, the Court will still hold open its findings in that regard so that if any evidence received in the course of trying the issue of post execution management and alleged fraud be relevant to the issue which has been termed the First Issue, the Court will not have foreclosed itself from consideration thereof in [3] making its findings. This has brought

and establish a right to voiding the Declaration of Trust and distribution of the assets without accounting. If the evidence be insufficient for that purpose, she still would have a right, under the terms of the Order severing issues for trial, to come to trial to try fraud in the inception during the trial of the issue of mismanagement and fraud on the part of the agent after the Trust was executed. The First Issue has occupied in excess of two days of testimony and argument. It therefore appears that trial of the other referred to issues would also be extensive and that it has been deemed prudent to sever the issues in order to conserve time with its attendant expense to the litigation. It now appears that plaintiff has made out her case on her theory of undue influence in the execution of the arrangement, and the only reason for putting forth the limitations immediately above mentioned is to explain to any reviewing court that the case has been tried upon a limitation as defined.

The creation of the Trust arises out of many circumstances which include the fact that Mrs. Tidwell and Mr. Richman were the immediate descendants of parents who left considerable wealth. It was only in the occurrence of circumstances which led to the execution of the Declaration of Trust, Lyda Nagel was known as Lyda Blythe Richman Nagel. She was at that time the wife of one Nagel whom

ered him one of the host of fortune hunters w
he [4] continually feared as threats to the inh
ance. She is a woman well educated in Liberal
having been graduated from well respected sch
and holds some academic degrees indicating
vanced education. Her education has been pre
inantly in language and literature. Follo
graduation from the last of the schools which
attended, she was employed for a time by the
of California in one of the Relief Agencies w
existed during the depression years. Her pos
was that of Case Worker and at one time she
a Supervisor of Case Workers. Apparently she
well in that employment. She has taught scho
one of the South American countries where sh
structed children of resident American Natio
Since her return she has delivered public lec
on her observations and experiences in travel.

Although making no claim to being a woman
great physical beauty, Mrs. Tidwell is none-the
a person of considerable personal charm and
traction. It would be expected that if she were
out estate, she would still be appealing as a
pect for matrimony. This is important here be
of defendant's long term insistence that it i
true. Defendant Frederick I. Richman is her
sibling. He is older, much more aggressive, a
successful member of the California State Bar
very considerable learning and ability in the
and handling of property brought him to a po

ested a great deal of pride in the ability and
ss of their son. Throughout her youth, Mrs.
l (first as Lyda Blythe Richman and later
la Blythe Richman Nagel) held a young sis-
onsiderable admiration for the very real and
y recognized [5] accomplishment and senior
ng in the family of her Stanford-trained
brother. She thought of herself as educated
gentle arts and of defendant as a wise, tech-
trained master of practical estate problems.
s actually a man of somewhat testy and dom-
ng disposition, inclined to be critical of his
er sister's habits and friends. While she
up to him, he looked down upon her. The
s, who were in declining years (the father
already suffered a stroke and being under
isability) had need to rely for some guidance
al and property affairs, and often looked in
o their accomplished son for that guidance.
Tidwell often accompanied her father and
r on errands to a rental property. She some-
even collected some rents but never became,
as trained to become, a manager of income
ty. The culture which had been acquired by
daughter Lyda was in the classical type of
ion. The brother had developed his natural
s to the extent that he was a capable, well
d lawyer, having special acquaintance with
and related matters. He was given to making

less she has recently been remarkably reconstructed that would make her undesirable in the marriage market except to a fortune hunter to whom she would have strong attraction solely because of the substantial nature of her then prospects of inheritance and later realization of those prospects. The evidence indicates that Mr. Richman did believe that his sister would be naturally attractive to fortune hunters and did tend to regard her friends as either casual acquaintances or divorce seekers for her financial bounty. [6] He pointed out and emphasized his view that no one else would be interested in her. He did consider himself (rightly or so) a very well educated and capable lawyer. His accomplishment was continually in plaintiff's mind.

Mrs. Tidwell, during the time that she was married to Nagel and subsequently unto the present time, has been plagued with occasional, but sometimes substantial, legal problems. She did not get along well with her first husband and ultimately divorced him. There was a property settlement in the event of dissolution of that unhappy marital union. She lacked education and schooling in tax matters and her lawyer brother possessed them to a high degree. He acted as her attorney in the liquidation of her marital problem and in the making of her tax returns. The evidence shows that whenever she needed a lawyer, she turned to her brother who was always available, competent and, while a little patronizing toward his sister, efficient in handling her legal

retirement. They were trustors under a De-
ed of Trust and although the evidence is
on the point, it is uncontradicted that con-
serving in expense in the after death set-
tling of their affairs was accomplished by the
said Trust was in existence. There is evi-
that plaintiff at one time told her brother that
so much in the way of property costs and
had been saved by the parents' Trust, it
be advantageous for the brother and sister
plaintiff and defendant in this action) to have
lar trust. The whole sum of evidence, how-
adds up to the fact that the brother, in early
ained something of a mastery over his sister's
connection with her thoughts concerning her
and [7] that the real suggestion that there
rust between these siblings, of divergent per-
y and objectives, was adroitly suggested by
other. It appears that he always thought of
ate as something to be guarded, built up, and
ally kept intact (although the properties of
it consisted might be sold or exchanged). His
t was to hold the basic fortune and some of
ement together. Her philosophy was that she
woman of means and might as well spend
f it. There is no suggestion in her conduct of
al profligacy, but her brother was, and still
stantly fearful of dissolution of the estate he
en and helped grow. He abhors her plan to

ness. It is true that the mere fact of brother-sister relationship does not in itself create a fiduciary status. It may well be, and in this case was, one of the ingredients in a fact situation leading to the creation of such a relationship. See Johnson v. Clark, 7 Cal. 2d 529, at pp. 534-535:

“Plaintiff and defendant are sisters. The relationship between sisters is not presumed to be confidential as is the relation between husband and wife, parent and child, attorney and client, but a confidential relation between sisters may be shown to exist. (Citing cases) Blood relationship is an important factor in determining whether in fact a confidential relationship existed. (Citing case, supra) When it is established as a fact that a confidential [8] relationship exists between sisters, the rules governing confidential relations apply, and a presumption of undue influence arises from any transaction by which the person in the superior position gains an advantage over the other. (Citing cases.) Such transactions are constructively fraudulent, and the burden is cast upon the party who has gained the advantage to show fairness and good faith in all respects. Citing cases.)”. (Emphasis in quoted material.)

To similar effect is Odell vs. Moss, 130 Cal. 171, where it was said, at p. 356:

“The relationship of brother and sister is not in itself a fiduciary relation, but it is a material

ing observed and heard the brother and sister
ey related their stories, each subjected to
ing cross-examination, and also having in
the testimony of other witnesses who testified
point, the Court finds that a fiduciary rela-
ip existed between brother and sister in the
t situation, from at least the time plaintiff
e of age.

till more definitely defined fiduciary relation-
as existed at all times pertinent to the trans-
s in question because of an attorney and client
nship which began during the domestic
e of plaintiff with her first husband and con-
until shortly before plaintiff brought this
[9]

basic rule is stated in 6 California Jurispru-
2nd 306, where Section 137 says:

* The attorney's relation to his client is both
ary, committing the attorney to the most
ulous good faith, * * *".

s is treated more fully at pages 317-319 of
me work where Section 142 says:

* An attorney at law is not prohibited from
ng into any business transaction with a client,
ng or not touching the subject matter profes-
ty entrusted to him by the client. Such trans-
s are, however, subject to a close scrutiny, and
must be shown to be fair in all respects. The
ey must prove that he has given to the client

further by holding that the client is entitled to advice independent from that of the attorney, though also stating that this element alone is not conclusive. The attorney is thus charged with a so-called presumption of undue influence.

“The presumption is based on the fiduciary character of the attorney-client relationship, and on a statutory provision to the effect that all transactions [10] between a trustee and his beneficiary, in which the trustee obtains any advantage, are presumed to be entered into without any consideration and under undue influence. That statute is applicable to the attorney-client relationship. The presumption is to the effect that ‘undue influence’ was used by the attorney in inducing the client to enter into the transaction, and that he did not give sufficient consideration to the client. This does not mean, however, that a total want of consideration is presumed. And, even where the presumption applies, and has not been rebutted, the transaction involved is not void, but merely voidable. A typical example of the application of the presumption of undue influence is the case of a will, drafted for a client by an attorney or under his direction or influence, whereby a disposition is made in favor of the attorney.”

It is of importance to measure the facts of the case against a rule stated in Section 143 of the Restatement, Chapter, at pp. 320-321, as follows:

“* * * The presumption of undue influence is

racts which create the relationship. In negotiating the terms of the attorney's employment, the active client deals [11] with the attorney at length. * * *".

uncontradicted that plaintiff consulted defendant whenever she needed counsel, and there is no doubt but that a general relationship of attorney and client existed at the time critical to the present transaction.

It is plain that defendant had ample counsel, and that this was entirely proper, possibly necessary. In any event, wise, it is striking that in entering into the arrangement to which defendant now seeks to hold plaintiff for life, the plaintiff relied entirely upon defendant. Under the circumstances defendant created a fiduciary relationship upon two distinct bases (amplified older brother and younger brother and attorney-client), it was the definite duty

of Richman to insist that his sister have independent legal counsel before extending the general relationship of attorney and client into a lifetime commitment of the attorney. This he not only did not do, but he tended to discourage while paying slight and nominal lip service to the principle.

This leads to a consideration of whether he has discharged his burden. Very definitely he has not. He failed to and did secure an advantage. He obtained a lifetime contract of employment at a rate

would not have been agreed to by one looking
a trustee in an open competitive market.

Some apt language on the general duty of
defendant appears in *Bacon vs. Soule*, 19 Cal.
428, at p. 434:

“The law relating to the subject of confidence
relations has been so often declared and is generally
so well [12] understood that a mere reference to
its underlying principles will suffice for the discus-
sion and decision of the paramount point presented
upon this appeal. A ‘confidential relation’ in law
may be defined to be any relation existing between
parties to a transaction wherein one of the parties
is in duty bound to act with the utmost good faith
for the benefit of the other party. Such a relation
ordinarily arises where confidence is reposed by one
person in the integrity of another, and in such a
relation the party in whom the confidence is re-
posed, if he voluntarily accepts or assumes to accept
the confidence, can take no advantage from his position
relating to the interest of the other party without
the latter’s knowledge or consent. A ‘fiduciary relation’
in law is ordinarily synonymous with a ‘confiden-
tial relation.’ It is also founded upon the re-
posed confidence by one person in the integrity
and fidelity of another, and likewise precludes the
idea of profit or advantage resulting from the transac-
tions of the parties and the person in whom
confidence is reposed. (Civ. Code, sec. 2219; [C
cases].)

priest [13] and parishioner, principal and guardian and ward, counsel and client, etc., each of said relations the party in whom the confidence is reposed must stand in his dealings with the other party unimpeached of the slightest breach of the confidence reposed, and if he derives any advantage from the relation, the law casts upon him the burden of showing that the relation out of which the advantage arose was fair and just and fully understood and consented to by the party confiding in him. * * *".

Also, Matter of Danford, 157 Cal. 425, at p.

* The relation between attorney and client is a fiduciary relation of the very highest character, which demands the attorney to most conscientious fidelity *prima fides*.' (Cox vs. Delmas, 99 Cal. 104, 123, 66 Pac. 836[1].) It is one which precludes the attorney from obtaining any personal advantage by abusing the confidence reposed in him by his client. (Burris, 101 Cal. 624, [36 Pac. 101].) * * *

It is true that Danford charged high fees for services not rendered, but this is so close to charging excessive fees for actual services, than is ordinarily charged for such services, that the same principle is involved here although in a different degree. The relationship was already in existence and not related to future services, the exceptions mentioned in Cooley vs. Miller & Lux, 156 Cal. 510, will

“The rule is well established that the relation attorney and client is confidential in character, that any contract entered into between them while that relation continues whereby the attorney obtains an advantage from the client, is presumed to have been made by the client under the undue influence of the attorney. (Kisling vs. Shaw, 33 Cal. 440, [91 Am. Dec. 644]; Civ. Code, sec. 223; Story’s Equity Jurisprudence, secs. 310, 311; Pomeroy’s Equity Jurisprudence, sec. 390.) In the section cited Mr. Pomeroy says: ‘The presumption always arises against the validity of a purchase or sale between the client and attorney made during the existence of the relation. The attorney must overcome that presumption by showing affirmatively, in most perfect good faith, the absence of undue influence, a fair price, knowledge, intention, and freedom of action by the client, and also, that he has given his client full information and disinterested advice.’ * * * If all these circumstances are proved the contract will stand; if not, it will be defeated or set aside.’ The presumption does not apply to a transaction in which the attorney openly assumes a hostile attitude to his client. (Johnson vs. Johnson, 3 DeG & J. 22.) Nor is it applicable to a contract by which the relation is originally created and the compensation of the attorney fixed. The confidential relation does not exist until such a contract is made and in agreeing upon its terms the parties deal at arm’s length. * * *

While an attorney is not prohibited from having business transactions with his client, yet, inasmuch as the relation of attorney and client is one in which the attorney is apt to have very great influence over the client, especially in transactions which are a part of or intimately connected with the client's business in reference to which the relation of attorney and client is always scrutinized with jealous care, and are set aside at the instance of the client, unless the attorney can show by extrinsic evidence that his client acted with full knowledge of all the facts connected with the transaction, and fully understood their effect; and any attempt by the attorney to enforce an agreement on the part of the client growing out of the transaction, the burden of proof is always on the attorney to show that the dealing [16] was fair and just, and that the client was fully advised. (Citing cases.) In the words of Lord Mansfield he must make it manifest that he gave to his client all that reasonable advice against himself which he would have given him against a third person. * *”.

The Declaration of Trust was, and is, voidable; and as the plaintiff has sued to set it aside for the foregoing reasons, the Court holds that she has established her case, and the corpus of the Trust shall be distributed according to the interests of the Trustees. All questions and matters, except that the

ing receivership which will be ordered concurrently with this Memorandum.

Defendant has contended ratification, waiver, operation of the Statute of Limitations, because of certain amendments made to the Declaration and certain consultations between plaintiff and attorneys in New Mexico.

The simple answer to all such questions is that the first legal consultations were had respecting substitution of beneficiaries upon plaintiff's death and did not go at all to the subject herein litigated.

Acts which will amount to undue influence arising from an elaborated brother-sister relationship are ordinarily of long rather than brief duration. Undue influence did not occur here in a moment. It grew out of a succession of acts, long continuing attitudes and a sequence of events which covered a long period of time. Conversely, [17] it did not terminate suddenly. Plaintiff was still under undue influence when she first went to Mr. Jones (New Mexico attorney) and her employment of him did not search out the vice in her brother's conduct or in the Declaration of Trust (which was in proper form—for many others but not this case). Plaintiff remained under the spell of undue influence until very shortly before the action was filed. She did not know the extent of advantage her brother had obtained until she asked him to renounce it. It was to her, a still not fully known quantity. She could not ratify what she did

the extent to which she empowered defendant, if desired there be a trust, the facts compelling that the advantages given her brother in trust indenture, and the rights surrendered by her therein, were not fully explained to and understood by her. By reason of defendant's standing attitude toward her, including his denial of her marriageability (except to an ill-tempered fortune hunter) she was, at the time she was a trustor, in that condition of subordination to him which is colloquially described as "run down". Although she has now emerged from that state of being dominated, she came out of it just as an anesthetized person slowly regains full control of conscious action. It cannot be said that she ratified a single one of defendant's acts after she became free from his domination, or that she understood fully the trust instrument which was so advantageous to her right to have funds for less speculative investment, if she so chose, and which gave him absolute control at high fees.

It is established that the three year period of [18] months of Section 338, Subsection 4, of the Code of Civil Procedure which provides that the cause of action is "deemed to have accrued until the discovery" applies to cases of constructive fraud and undue influence. *Neet vs. Holmes*, 25 Cal. 2d 447; *Sears vs. Sears*, 27 Cal. 2d 131; *Victor Oil Co. vs. Drum*, 27 Cal. 2d 226, 239.

covery of the fraud. Hansen vs. Bear Film Company, Inc., 28 Cal. 2d 154.

Rottman vs. Rottman, 55 Cal. App. 624, stating the rule (at p. 632) which the Court need not apply here but which answers many of defendant's contentions:

“* * * Another rule stated in the books is that the doctrine of laches is not strictly applied between near relatives * * *”.

See also, Bailey vs. New England Mut. Life Co., 35 Fed. Supp. 1007, at p. 1010:

“* * * Accepting the agreement in the belief the deceased was dealing honestly with her, she justified in resting in that belief, and was called upon then or thereafter to make independent inquiry as to his good faith. * * *”. (Emphasis quoted material.)

and Sibert vs. Shaver, 111 Cal. App. 2d 833; C vs. White, 187 Cal. 489; Feckenscher vs. Gar 12 Cal. 2d 482.

Counsel for plaintiff will prepare Finding of Fact, Conclusions of Law, and Judgment, which shall provide [19] for distribution of the estate and the interests of the parties in the corpus shall be determined by an accounting.

Dated: This 30th day of November, 1953.

/s/ ERNEST A. TOLIN,
U. S. District Judge

of District Court and Cause.]

MINUTES OF THE COURT

Nov. 30, 1953, at Los Angeles, Calif.
Present: The Hon. Ernest A. Tolin, District
Deputy Clerk: Wm. A. White; Reporter:
Zellner; Counsel for Plaintiff: Wm. P.
; Counsel for Defendant: Jos. T. Enright.
Proceedings: Court hands counsel copies of its
Memorandum of Decision, to Counsel. Court ap-
points Roy E. Hallberg as Receiver, fixes bond of
Receiver in the amount of \$75,000, and orders
counsel for plaintiff draw formal order of ap-
pointment.

Memorandum of decision.

EDMUND L. SMITH,

Clerk

/s/ By WM. A. WHITE,

Deputy Clerk

[21]

of District Court and Cause.]

ORDER APPOINTING RECEIVER

Whereas, the undersigned, Judge Presiding in
above entitled matter, has this day signed and
Memorandum of Decision decreeing and or-
dering the dissolution and termination of that cer-

erick I. Richman, heretofore commonly known as the "Richman Trust," and referred to herein as the "former Richman Trust," and

Whereas, in the opinion of the court, it is necessary and desirable that a receiver be immediately appointed herein for the purposes of carrying out the decree and judgment of this court and in the best interests of all parties and for the protection and preservation of the assets of said former Richman Trust, and as hereinafter set out.

Now, Therefore, It Is Hereby Ordered that E. Hallberg be, and he is hereby appointed receiver of all the real and personal [22] property constituting the said former Richman Trust; said property includes, among other things, apartment houses, all located within the City of Los Angeles, County of Los Angeles, State of California, commonly known and designated as:

La Loma Apartments, 251 S. Olive, Los Angeles.

Oliver Cromwell Apartments, 418 S. Normandie, Los Angeles.

Canterbury Apartments, 1746 N. Cherokee, Los Angeles.

Fountain Manor Apartments, 5165 Fountain Avenue, Los Angeles.

Western Arms Apartments, 1057 S. Western Avenue, Los Angeles.

That the trust also includes, among other things, accounts receivable and funds in the name of

Egan Trust Co., Inc. 13
& Trust Company of Los Angeles, and else-
and other assets which may hereinafter be
ined or indicated by the court.

Further Ordered that said receiver be, and
empowered and directed to forthwith take
ion of all of the above properties and assets
y other properties or assets which are, or
etermined to be, a part of the said former
an Trust; and said receiver is hereby em-
d and directed to take possession of and to
e and operate said apartment houses and
r and protect the same and all other prop-
elongs to the said former Richman Trust,
out of trust funds the operating expenses
oper and lawful liabilities of said property
rmer trust, or as ordered by the court herein.

Further Ordered that said receiver be, and
ereby empowered and directed, to forthwith
ossession of all books of account, records,
nts, cancelled checks, bank statements, cor-
dence and all files and records pertaining to
d former Richman Trust from the date of
ption to the date hereof and in the possession
er the control of defendant Frederick I.
an, his agents, attorneys or representatives,
e said defendant Frederick I. Richman is
d, and he is ordered, to deliver forthwith all
l records and documents to the said re-

to this court, and in the sum of \$75,000.00, conditioned upon the faithful performance of his duties as such receiver.

It Is Further Ordered that plaintiff Lyda Tidwell and her attorneys and defendants and their attorneys, and all other persons and each of them be enjoined, and they are hereby restrained from disturbing possession of said receiver or in any manner molesting the said receiver of the said property, or interfering directly or indirectly, with administration of the receivership.

It Is Further Ordered that said receiver continue in his duties until the distribution of the assets of the former Richman Trust to the parties as their interests shall appear or until further order of this court.

It Is Further Ordered that the receiver shall not distribute any part of the principal or income of either the plaintiff Lyda Tidwell or defendant Frederick I. Richman without specific order of this court.

It Is Further Ordered that the said receiver conduct and carry on until the further order of the court, the normal business and affairs of the former Richman Trust and all matters incidental thereto or necessary in connection therewith, and that any of the parties hereto, including said receiver, may apply to the court from time to time

and this 30th day of November, 1953.

/s/ ERNEST A. TOLIN,

Judge

[24]

endorsed]: Filed November 30, 1953.

of District Court and Cause.]

BOND OF RECEIVER

All Men By These Presents:

we, Roy E. Hallberg, of Corona Del Mar, California, as Principal, and the Fidelity and Deposit Company of Maryland, a corporation duly organized and authorized to act as Surety under the act of Congress approved August 13, 1894, whose principal office is located in Baltimore, State of Maryland, as Surety, are held and firmly bound unto the United States of America in the sum of Seventy-five thousand and no/100 (\$75,000.00) Dollars, in lawful money of the United States, to be paid to the United States, for which payment, well and lawfully to be made, we bind ourselves and our heirs, administrators, successors and assigns, jointly and severally, by these presents.

Condition of the Above Obligation Is Such, That if Whereas by an order of the United States District Court, for the Southern District of Cali-

ceiver therein, and he was ordered before entering upon the discharge of his duties as such Receiver to [28] execute a bond according to law in said sum of Seventy-five Thousand and no/100 (\$75,000) Dollars;

Now, Therefore, if the said Roy E. Hallberg, as such Receiver, shall faithfully discharge his duties in this action and obey the orders of the Court therein, then this obligation shall be null and void; otherwise to remain in full force and effect.

In Witness Whereof, the said Roy E. Hallberg has hereunto set his hand and seal and the said Company has caused this bond to be signed by its Attorney-in-Fact at Los Angeles, California, this 2nd day of December, 1953.

/s/ ROY E. HALLBERG,
[Seal] FIDELITY AND DEPOSIT COMPANY OF MARYLAND,
/s/ By ROBERT HECHT,
Attorney in Fact

Examined and recommended for approval as provided in Rule 8.

/s/ JOHN WHYTE,
Attorney

Approved this 2nd day of December, 1953.

/s/ ERNEST A. TOLIN,
District Judge

of District Court and Cause.]

PETITION FOR AUTHORITY TO EMPLOY COUNSEL

Honorable Ernest A. Tolin, Judge of the
above entitled Court:

Verified petition of Roy E. Hallberg, respect-
represents and shows as follows:

Petitioner is the duly appointed, qualified, and
Receiver of all the real and personal prop-
erty constituting the former Richman Trust.

Petitioner represents that it is necessary for
him to employ legal counsel on a general retainer
to represent him as counsel herein and to advise
concerning his powers, duties, and obligations
as Receiver, to assist him in connection with all
matters necessary for the protection, preserva-
tion and management of the assets of the former
Richman Trust, to assist him in connection with the
presentation of petitions or reports to this Court,
in making petitions for instructions to the Receiver
and to act in any and all legal matters that
may arise in the course of the administration of the
assets of said former Richman Trust, when and if
they arise. [34]

It may be necessary for counsel to appear in
to prosecute or defend suits or proceedings, if
when they arise, and to take all necessary and

4. Petitioner proposes, upon the granting of petition, to employ the firm of FitzPatrick & Whyte and John Whyte as such counsel, and they agreed to accept as compensation for any services rendered to petitioner as counsel such reasonable amount as may be allowed by this Court.

5. Your petitioner is satisfied from the affidavit of John Whyte attached hereto that said attorneys represent no interest adverse to him as Receiver or to any other party hereto, in matters upon which said attorneys are engaged, and that the employment of said attorneys under a general retainer would be for the best interests of the former Richman Trust.

Wherefore, petitioner prays approval of the employment, as an expense of administration hereof of Messrs. FitzPatrick & Whyte and John Whyte as attorneys for petitioner as Receiver of all real and personal property constituting the former Richman Trust.

/s/ ROY E. HALLBERG,
Receiver

State of California,
County of Los Angeles—ss.

John Whyte, being first duly sworn, deposes and says:

1. He is an attorney duly admitted to practice law in the above entitled Court and is a member

the above entitled proceeding and for whose
ment as such attorneys a petition is being
ed and filed by the Receiver herein.

t and the members of his firm have not
l are not employed by or connected with any
parties to the above entitled action or with
er person having any interest adverse to the
r.

/s/ JOHN WHYTE

cribed and sworn to before me this 2nd day
mber, 1953.

/s/ ELEANOR HUMPHREYS,
Notary Public in and for said
County and State [35]

orsed]: Filed December 2, 1953.

of District Court and Cause.]

ORDER AUTHORIZING RECEIVER TO EMPLOY COUNSEL

E. Hallberg, as Receiver of all the real and
l property constituting the former Richman
having filed his verified petition for author-
employ counsel as an expense of administra-
rein, and it appearing for the reasons shown
that it is necessary for the Receiver to

that said counsel represent no interest adverse to the Receiver or to any of the parties in the aforesaid entitled action in the matters upon which the Receiver is to be engaged, and it further appears that the employment of FitzPatrick & Whyte and John Whyte would be in the best interests of the parties hereto, and that this cause is one justifying employment of counsel on a general retainer,

Ordered that the Receiver herein be and he by is authorized and directed to employ FitzPatrick & Whyte and John Whyte of Los Angeles, California, as counsel on a general retainer as an expert administration herein to represent him in the matters mentioned in said petition, their compensation [36] for any services rendered to be such reasonable amount as may be allowed by this Court.

/s/ ERNEST A. TOLIN,
Judge

Affidavit of Service by Mail attached.

[Endorsed]: Filed December 2, 1953.

[Title of District Court and Cause.]

MINUTES OF THE COURT

Date: December 2, 1953, at Los Angeles, California

Present: The Hon. Ernest A. Tolin, District Judge; Deputy Clerk: Wm. A. White; Reporter: Virginia Wright; Counsel for Plaintiff, Wm. J. Camusi; Counsel for Defendant: Joseph T.

Edmund L. Smith, Esq.
Corney Enright moves the Court to hold the status quo, pending the defendants right to or a new trial or for a rehearing on the decision. Mr. Enright further moves that be held in status quo during the month of December, relative to tax matters.

Defendant further moves for leave to "Lodge" Notice of Appeal and that Court fix the amount of bonds and sedes bond.

Ordered that defendant is granted leave to file ' Notice of Appeal.

Further Ordered that hearing to fix amount of sedes bond is continued to 3:00 p.m. of December 3, 1953.

Filed defendant's Notice of Appeal. Filed Bond for Receiver in the amount of \$75,000. Filed Oath of Receiver, Roy E. Hallberg.

Corney Nossaman argues motion in opposition to appointment of Receiver, and Attorney for plain- tiffs replies to said argument.

Ordered that this cause is continued to December 3, 1953 at 10:00 a.m. for further hearing.

Adjourn 4:10 p.m.

EDMUND L. SMITH,

Clerk

/s/ By WM. A. WHITE,

MINUTES OF THE COURT

Date: December 4, 1953, at Los Angeles, Ca

Present: The Hon. Ernest A. Tolin, Dis
Judge; Deputy Clerk: Wm. A. White; Repor
Virginia Wright; Counsel for Defendant: Jo
L. Wyatt.

Proceedings: Attorney Wyatt presents to c
form of Notice of Appeal defendant will file t
order of court entered 11/30/53 re: appointmen
Receiver Pendente Lite and requests court to
amount of supersedeas bond on appeal.

The court deems Mr. Wyatt's remarks as fun
argument in support of motion to vacate order
pointing Receiver and enters order denying
motion and further denies the motion to fix am
of supersedeas bond on appeal.

EDMUND L. SMITH,
Clerk

/s/ By WM. A. WHITE,
Deputy Clerk

Legal Notice, Etc.
of District Court and Cause.]

PETITION FOR AUTHORITY TO PAY CHRISTMAS BONUSES

Honorable Ernest A. Tolin, Judge of the
above entitled Court:

Verified petition of Roy E. Hallberg, by
Hyte, one of his attorneys, respectfully rep-
resents and shows as follows:

Petitioner is the duly appointed, qualified and
Receiver of all the real and personal prop-
erty constituting the former Richman Trust.

Petitioner represents that in the interest of
maintaining harmony, cooperation and good will on
the part of the employees of the five apartment
houses constituting the major portion of the assets
of the former Richman Trust, it is desirable that
petitioner promptly pay to each of said employees a Christ-
mas bonus. Said five apartment houses are as fol-

Cherrybury Apartment Hotel, 1746 North Chero-
keelwood 28, California.

Fountain Manor Apartment Hotel, 5165 Foun-
tain Avenue, Los Angeles 26, Calif. [43]

Cromwell Apartment Hotel, 418 South
Hollywood, Los Angeles 5, California.

Western Arms Apartment Hotel, 1057 South

About 41 employees are employed in said apartment houses, including a manager for each apartment house, maids, housekeepers, desk clerks, maintenance men.

3. Petitioner proposes to pay Christmas bonuses to said employees in an aggregate amount not to exceed \$600. He proposes to pay a bonus of \$25.00 to \$50.00 to the manager of each said apartment house, the exact amount of each such bonus to be determined by the manager's seniority, value as a manager, and the size of the apartment house. He further proposes to pay bonuses of \$5.00 to \$20.00 to the various maids, housekeepers, desk clerks, and maintenance men, the exact amount of each such bonus to be dependent upon seniority and the quality of their work.

4. Petitioner further represents that Christmas bonuses in approximately the same aggregate amount have been paid to said employees for several years last past.

5. Petitioner is temporarily out of the County of Los Angeles, State of California. This petition is made and executed by and through John W. [redacted] one of his attorneys, at his request.

Wherefore, petitioner prays that the above titled Court make and enter its order authorizing him to pay Christmas bonuses in an aggregate amount not to exceed \$600 to the employees of

amount of each bonus to be fixed in the discretion of your petitioner.

/s/ ROY E. HALLBERG,

Receiver

/s/ By JOHN WHYTE [44]

Verified. [45]

passed]: Filed December 18, 1953.

f District Court and Cause.]

R AUTHORIZING RECEIVER TO PAY CHRISTMAS BONUSES

reading and filing the verified petition of Roy E. Hallberg, Receiver, by John Whyte, one of the attorneys, for authority to pay Christmas bonuses to the employees of the five apartment houses comprising the major portion of the assets of the Richman Trust, the specific amount of each to be fixed in the discretion of said Receiver, and good cause appearing therefor,

Ordered that said Receiver be, and he be and is hereby authorized to pay Christmas bonuses in an amount not to exceed the sum of \$600.00 to the employees of the five apartment houses comprising the major portion of the assets of the Richman Trust, the specific amount of each to be fixed in the discretion of said Receiver.

/s/ ERNEST A. TOLIN,

Judge

[46]

PETITION FOR AUTHORITY TO RE-
VATE INDIVIDUAL APARTMENTS
CATED IN FIVE APARTMENT HOU
INCLUDED AMONG ASSETS OF FO
ER RICHMAN TRUST

To the Honorable Ernest A. Tolin, Judge of
above entitled Court:

The verified petition of Roy E. Hallberg res-
fully represents and shows as follows:

1. Petitioner is the duly appointed, qualified
acting Receiver of all the real and personal p-
erty constituting the former Richman Trust.

2. The major portion of the assets of the fo-
Richman Trust consists of the following five a-
ment houses, to wit:

Canterbury Apartment Hotel, 1746 North C-
kee, Hollywood 28, Calif.

Fountain Manor Apartment Hotel, 5165 F-
tain Avenue, Los Angeles 26, California.

Oliver Cromwell Apartment Hotel, 418 S-
Normandie, Los Angeles 5, California. [48]

Western Arms Apartment Hotel, 1057 S-
Western Avenue, Los Angeles 6, Calif.

La Loma Apartment Hotel, 251 South Olive
Angeles 13, Calif.

3. Many of the individual apartments locat-
each of said apartment houses, and particu-

all Apartment Hotel, are in need of repair and renovation. Specifically, many of said apartments need painting, many need new carpets, practically all need new floor and table lamps, nearly all individual apartments have old fashioned ranges concerning which the tenants complain, many need new draperies, and the beds and sofas in some apartments need to be replaced and repaired.

Petitioner is informed and believes and therefore alleges that some individual apartments in each of the five apartment houses have not been painted since the apartment house in which they were located became a part of the assets of the former Richman Trust. In this connection the Canterbury in 1948, the Fountain Manor in 1944, the Cromwell in 1950, the Western Arms in 1941, and La Loma in 1949.

Conditions of disrepair vary greatly as among individual apartments in each of the five apartment houses above mentioned. Petitioner is of the opinion that some apartments can be placed in good condition by an expenditure of not more than \$150. Petitioner is likewise of the opinion that the maximum cost of renovation for any one individual apartment should not exceed \$500. As a general rule, petitioner proposes to make such renovations

being occupied by a tenant in order to keep tenant from vacating the apartment.

6. Petitioner represents to this Court that repair and renovation of the individual apartments in the manner and to the extent above mentioned [4] is essential to the continued efficient and economical operation of said apartment houses and to the conservation and preservation of the same for the following reasons, among others:

(a) The managers of said apartment houses have complained to petitioner that because of the poor condition of many apartments in their respective buildings, they are having trouble renting the same. At the present time there are approximately four vacancies at the Western Arms, two or three vacancies at the Canterbury, and two or three vacancies at the Fountain Manor. If an apartment is allowed to remain vacant for any extended period of time the resulting loss of income will soon exceed the cost of repair and renovation.

(b) In recent years there has been considerable new apartment house construction; consequently competition for tenants has become keener. Naturally prospective tenants do not want a run-down apartment when a well-kept one of comparable size and location is available at only a slightly higher price.

(c) When apartments become run-down and dilapidated they must be rented at lower prices, they attract a poorer class of tenants which necessarily detracts from

the Canterbury, are located in areas which attract a high class of tenants. These apartments should, if anything, be "up-graded" so as to take advantage of their location rather than allowed to deteriorate.

Poorly kept apartments tend to attract transients instead of the more desirable semi-permanent tenants.

The difficulties encountered in keeping an apartment house filled to capacity are much increased when the house is compelled to cater to a transient trade.

Therefore, petitioner prays that the above court make and enter its order authorizing the Receiver of all the real and personal property constituting the former Richman Trust, to lease the individual [50] apartments in the five apartment houses above mentioned in the manner before specified and at a cost not to exceed \$500 for any one apartment.

/s/ ROY E. HALLBERG,
Receiver

The petition is granted following hearing in court, January 15, 1952.

/s/ ERNEST A. TOLIN,
Judge

[51]

Verified.

[52]

CONSENT TO PETITION FOR AUTHORIZATION
TO RENOVATE INDIVIDUAL APARTMENTS
INCLUDED AMONG THE ASSETS OF
SETS OF FORMER RICHMAN TRUST

To the Honorable Ernest A. Tolin, Judge of the
above entitled Court:

The verified petition of Roy E. Hallberg, requesting consent and authorization to renovate individual apartments in apartment houses included among the assets of the former Richman Trust has been this day duly received by counsel for plaintiffs, and after consideration, plaintiff Lyda Tidwell, by and through her counsel, does hereby consent to the granting of said petition upon the grounds and for the reasons set forth in the petition of the said Roy E. Hallberg.

That plaintiff notes this further evidence of the unfortunate conditions which were allowed to develop about and exist in regard to the "management" of said former trust assets by defendant Richman and feels that it is apparently necessary, in accordance with the Receiver's petition, for the protection and preservation of her assets and her half interest in the former Richman Trust that said petition be granted, [53] provided that said Receiver

stified in maintaining or increasing the income;

Shall make a report each month, or as the may direct, listing and covering the cost of improvements or renovations for the past or period; and

That such expenditures shall not be so great as to eliminate the possibility, in the not too distant future, of the regular distribution of some of the income from said former trust assets to the beneficiaries, and as may be determined by the court.

Done at New York, New York, January 8, 1954.

MARTIN, HAHN & CAMUSI

/s/ By WILLIAM P. CAMUSI,

Attorneys for Plaintiff [54]

Acknowledgment of Service attached. [55]

Witness my hand and seal of the Court this 8th day of January, 1954.

of District Court and Cause.]

MENT FOR REVOCATION AND AVOIDANCE OF TRUST, AND APPOINTMENT OF RECEIVER

The above entitled cause came on for hearing as to the issue which had been severed from others, before the Honorable Ernest A. Tolin, judge presiding, without a jury, and plaintiff appearing in

person and by his attorneys, Joseph T. Enright, also Walter L. Nossaman and Joseph L. Wyatt of Brady, Nossaman & Paulston, and the court having determined that a number of issues were involved in plaintiff's Complaint, all of which involved defendant Frederick I. Richman, and some of which involved one or more different other defendants, and the first basic issue being of fraud and undue influence in the execution of the trust executed between plaintiff and defendant Frederick I. Richman, and said issue [79] involving plaintiff's first claim for revocation and avoidance of the trust and the amendments thereto, and said claim pertaining only to plaintiff and said defendant Frederick I. Richman, and said issue has been severed and tried separately in the furtherance of convenience and justice, and defendant Frederick I. Richman having agreed to the severance of said issue for trial, and the court having expressly directed the entry of final judgment herein on plaintiff's claim for revocation and avoidance of said trust and the amendments thereto, upon express determination that no just reason for delay exists in the entry of judgment on said claim, the court being fully advised in the premises,

Now, Therefore, It Is Ordered, Adjudged and Decreed that the said inter vivos trust dated November 1, 1945, and executed by and between plaintiff Lyda Tidwell and defendant Frederick I. Richman, be and the same is hereby ordered to be

Further Ordered, Adjudged and Decreed the first amendment to said trust, dated August, 1948, and that the second amendment to said trust, dated November 20th, 1950, and each of them and the same are hereby declared to be dissolved, cancelled and revoked, and that the same are of no further force or effect; and

Further Ordered, Adjudged and Decreed that plaintiff is entitled to the ownership and disposition to her, free and clear of said trust and the encumbrances thereto, and each of them, of her interest in the assets which comprised said trust, together with such additional assets, if any, as plaintiff may be adjudged entitled to after an accounting and

Further Ordered, Adjudged and Decreed that a receiver shall be appointed to seize and hold the said assets of the said trust of November 20th, 1950, pending an accounting, [80] and determination of the respective interests of the beneficiaries in the corpus of the Trust and/or pending the disposition of said assets to plaintiff and defendant as their respective interests may appear; and

Further Ordered, Adjudged and Decreed that said receiver shall manage, operate and control the assets of the said trust in such a manner as to preserve and maintain insofar as possible, the status quo of the condition, quality and nature of said

and this court retains jurisdiction of this cause for the purpose of enforcing this judgment and further orders made herein, as well as for the purpose of making final disposition of other issues pending in this cause; and all questions of the portions in which plaintiff and defendant own the corpus and all questions of accounting are reserved.

It Is Further Ordered, Adjudged and Decreed that plaintiff is entitled to her costs and disbursements incurred in the sum of \$2,364.78.

Dated this 21st day of January, 1954.

/s/ ERNEST A. TOLIN,
Judge

[Endorsed]: Filed Jan. 21, 1954. Entered on docket Jan. 22, 1954.

[Title of District Court and Cause.]

ORDER EXTENDING TIME WITHIN WHICH
RECEIVER MUST FILE HIS FIRST
REPORT AND PETITION FOR INSTAL-
MENTS, AND SUPPORTING AFFIDAVIT

Upon reading and filing the affidavit of Robert Whyte attached hereto, and good cause appearing therefor:

It Is Ordered that the time within which Robert Hallberg, as Receiver of all the real and per-

ursuant to the terms of Rule 18(b), Local
o. District, Calif., is hereby extended to and
g March 20, 1954.

: January 29, 1954.

/s/ ERNEST A. TOLIN,

Judge.

[82]

AFFIDAVIT OF JOHN WHYTE

Whyte, being first duly sworn, deposes and
That he is and at all times herein mentioned
y admitted to practice in the above entitled
that he is a partner in the law firm of
rick & Whyte, 756 South Broadway, Los
14, California; and that he is one of the
ys of record for Roy E. Hallberg, as Re-
f all the real and personal property consti-
the former Richman Trust.

r the terms of Rule 18(b) of Local Rules So.
, Calif., said Receiver is required, within
ays after his appointment, to file with the
ntitled Court a report and petition for in-
ns. Said Receiver was appointed on or about
er 30, 1953. Said Receiver is unable to file
ort and petition for instructions within said
of sixty days for the following reasons:

at had expected to be available during vir-
the entire week commencing January 24,
or counsel with the Receiver and his book-

hearing before Judge Peirson Hall of the
entitled Court during several full days of said
and has accordingly been unable to devote suff
time to the preparation of said report and pe
for instructions.

Affiant has been informed by Mr. Roy Har
said Receiver's bookkeeper, that said Harrison
had considerable difficulty in assembling th
counting data which must be included in said r
notwithstanding the fact that he has been wo
up the same for a number of days. Said Ha
has further informed your affiant that he w
unable to have said accounting data in final
prior to some time early in the week comm
January 31, 1954.

Wherefore, affiant prays that the time
which said Receiver must file said report and
tion for instructions be extended to and inc
February 8, 1954.

/s/ JOHN WHYTE

Subscribed and sworn to before me this 29
of January, 1954.

[Seal] /s/ JOSEPH L. HERBERT,
Notary Public in and fo
County and State.

[Endorsed]: Filed February 1, 1954.

f District Court and Cause.]

CE OF APPLICATION AND MOTION FOR PERMANENT RECEIVER

Frederick I. Richman, Defendant, and to Joseph Enright and Brady, Nossaman & Paulston, Attorneys, and to all known creditors of the Richman Trust, a correct list of the names and addresses of said creditors, who are being given herewith, being attached hereto, marked "Exhibit A" and expressly and by this reference incorporated herein and made an integral part of this

and Each of You Will Please Take Notice that Plaintiff, Lyda Tidwell, will apply to and move the within entitled court, in Department 6 thereof, on the 15th day of February, 1954, at the hour of 10 o'clock a.m., or as soon thereafter as counsel may be heard, for the appointment of a permanent receiver to take charge of and conserve the assets of the former Richman Trust, in such manner and upon such terms and conditions, and with such powers, as the court may determine fitting and

Said application and motion will be made and supported upon the [84] verified Complaint on file in this cause, and upon all of the papers, pleadings, exhibits, documents, minutes and all records on file in this cause, and upon the evidence in the above entitled cause, and upon

and dated November 30, 1953, and upon the findings or proceedings incident to and the Order appointing a Temporary Receiver of said former Richman Trust, duly signed on November 30, 1953, and on the Findings of Fact and Conclusion of Law and the Judgment in favor of plaintiff for Revocation and Avoidance of the Trust and the appointment of Receiver, all duly signed by the Honorable Court in the above entitled cause on the 10th day of January, 1954, and now in file in said cause, and finally, upon any affidavits as may be filed in the future, in, provided plaintiff deems the same to be necessary or appropriate.

At the time of the hearing and determination of said Motion and Application, plaintiff will reappear and seek the appointment of Roy E. Hallberg as Permanent Receiver, he having heretofore been designated as Temporary Receiver in the above entitled cause.

Dated: February 4, 1954.

MARTIN, HAHN & CAMUSI,
/s/ By LAURENCE B. MARTIN,
Attorneys for Plaintiff.

EXHIBIT "A" ON MOTION FOR PERMANENT RECEIVER

List of All Known Creditors of Former Richman Trust, Both Specific and Contingent, at the time of Business on February 2, 1954.

- Farms Co., 103 South Hamel Road, Los Angeles 48, California.
- Specialty Company, 5285 West Pico Boulevard, Los Angeles, California.
- er Bros. Corporation, 818 West 7th Street, Los Angeles, California.
- Byram, Tax Collector, Hall of Justice, Los Angeles 12, California.
- California Refrigeration Maintenance Co., 5905 Broadway Avenue, Los Angeles 38, California.
- de Laundry, 4414 Santa Monica Boulevard, Los Angeles 29, California.
- ied Paint Co., 4459 Sunset Boulevard, Los Angeles 27, California.
- Curtain & Blanket Cleaning Co., 5155 South Broadway Avenue, Los Angeles 37, California.
- mbia Pest Control Co., 101 North Virgil Avenue, Los Angeles 4, California.
- ent Refining & Oil Co., 2460 East Twenty-Second Street, Los Angeles 58, California.
- olidated Mattress Co., 6912 Santa Monica Boulevard, Los Angeles 38, California.
- tor of Internal Revenue, Federal Building, Los Angeles 12, California.
- partment of Employment, 1025 P Street, Sacramento 14, California.
- partment of Water & Power, 207 South Broadway, Los Angeles, California.
- rt H. Dulley and Co., 3750 West Sixth

Jesse M. Few Electric, 1515 West Seventh Street,
Los Angeles 17, California.

Frazer Bros. Oil-Burner Company, 1044 South
Western Avenue, Los Angeles 6, California.

Charles R. Hadley Co., 330 No. Los Angeles
Street, Los Angeles, California.

Red Lilly Plumbing, 2316 Hyperion Avenue,
Los Angeles 27, California.

Los Angeles Soap Co., 617 East First Street,
Los Angeles 54, California.

Murphy Bed Sales Company, 8048 West
Street, Los Angeles, California.

Mutual Benefit Life Insurance Company and
correspondent Pacific Mortgage Corp., c/o F
Mortgage Corporation, 210 West Seventh Street,
Los Angeles 14, California.

A. F. McConnell, 418 South Normandie Avenue,
Los Angeles 5, California. [86]

Walter C. Peterson, City Clerk, License and
Tax Division, Room 1, City Hall, Los Angeles
California.

Pacific Telephone and Telegraph Company,
South Olive Street, Los Angeles, California.

Paramount Cleaning & Dyeing Service,
West Third Street, Los Angeles 5, California.

Pfeiffer Upholstering Company, 4812 So. Western
Avenue, Los Angeles, California.

Frederick I. Richman, 926 Subway Terminal
Building, 417 South Hill Street, Los Angeles,
California.

ern California Gas Company, 810 South
Street, Los Angeles, California.

ern Union, 741 South Flower Street, Los
17, California. [87]

avit of Service by Mail attached. [88]

nowledgment of Service attached. [89]

orsed]: Filed Feb. 4, 1954.

f District Court and Cause.]

EMENT OF REASONS AND POINTS D AUTHORITIES IN SUPPORT OF PLICATION AND MOTION FOR PER- NENT RECEIVER

numerous reasons justifying and requiring
pointment of a receiver in accordance with
dings of Fact and Conclusions of Law and
ent, heretofore signed and filed, are so appar-
to not require any detailed statement, since
e all so well known to the court and respec-
ties. The Judgment and Findings are reason
Suffice it to say that the irreconcilable dif-
s between the parties, the nature of the
made and proven as against the defendant
n, and the necessity of protecting and pre-
the estate and interest of plaintiff in the
trust property until the matter may be

An additional reason for the appointment of the present receiver as a permanent receiver is because of his familiarity with the properties and the fact that he has now had sufficient experience to handle the requirements and problems incident to the management, care and preservation of these [90] properties. Many of the reasons justifying and recommending the appointment of a receiver in accordance with the judgment on the issue already determined are the same as, or akin to, the reasons detailed in the Points and Authorities heretofore served and filed in support of the appointment of a temporary receiver or a receiver pendente lite. Rather than clutter the record with repetitious material, we respectfully refer the court and the parties to the Memoranda of Points and Authorities previously filed in support of our application for a receiver and by this reference incorporate the points and authorities mentioned in said briefs respecting the matter herein, as though set forth here in full.

A receivership is necessary to protect the interests of all parties to a joint venture or partnership pendente lite or after judgment.

Moore vs. Oberg, 61 C. A. (2d) 216

McNeil vs. Graves, 92 C. A. (2d) 371

Armbrust vs. Armbrust, 75 C. A. (2d) 27

A receiver may be appointed to carry out or protect the integrity of a judgment rendered:

In 75 C. J. Sec. 692, it is stated:

ree and for the purpose of protecting and
ng the property so that the decree may be
to the fullest extent of the rights which it
l to fix."

accord: Hunt Prod. Co. vs. Burrage, 104 S.
W. (2d) 84; Edwards vs. Edwards, 36 S. W.
1980, 14 Tex. Civ. App. 87; Stockton vs. N. J.
ent. R. Co., 25 Atl. 942, 15 NJEq. 489.

ge 1104 of 4 C. J. Sec. it is said:

conservation or preservation of property
an appellate proceeding may be effected
a receiver appointed for that purpose."

accord: McCarthy vs. Kurkjian, 232 Pac.
61, 69 C. A. 682. [91]

r is inherent in the Federal Court to pre-
property in controversy by appointment of a

re Reisenberg, 208 U. S. 90, 109; 52 L. Ed.
1903; 28 S. Ct. 219; Ward vs. Central Trust
Co. of Ill., 252 Fed 127.

ctfully submitted,

MARTIN, HAHN & CAMUSI,
By LAURENCE B. MARTIN,
Attorneys for Plaintiff. [92]

nowledgment of Service attached. [93]

orsed]: Filed Feb. 4, 1954.

DEFENDANTS' EXHIBIT C

STIPULATION

Whereas, plaintiff, Lyda Tidwell, and defendant, Frederick I. Richman, have arrived at terms of agreement which will result, when completed, in the final settlement and disposition of the above titled matter, and,

Whereas, Lyda Tidwell, plaintiff, under said agreement, is to purchase all of defendant, Frederick I. Richman's share in the assets referred to in this trial as the "Richman Trust", and herein after referred to as the Richman Trust, and Lyda Tidwell already having paid to said Frederick I. Richman the sum of One Hundred Thousand Dollars (\$100,000.00) in pursuance of the terms of the said agreement, and the parties hereto desiring to settle in accordance with the terms of said agreement that the Receiver be relieved of his responsibilities in connection with the management, control and possession of the assets of the said Richman Trust with the exception of money in bank and now under the control of the Receiver; [94]

Now, Therefore, It Is Hereby Stipulated by and between counsel for plaintiff, Lyda Tidwell, and defendant, Frederick I. Richman, that the Receiver, Roy E. Hallberg, be relieved of the possession, control and management of the assets of the said Richman Trust, excepting funds in bank and und

possession, control and management of all
ts of the Richman Trust with the exception
y in bank, as above stated, and that all
nd records now in the possession of the Re-
Roy E. Hallberg, remain in their present
at the Oliver Cromwell Apartments, 418
ormandie, Los Angeles, California, and that
e be not removed therefrom pending final
nt of the above entitled matter, and that the
ake an order for the purpose of carrying
ulation into effect.

: February 26, 1954.

BRADY, NOSSAMAN &

PAULSTON and

JOSEPH T. ENRIGHT,

By JOSEPH T. ENRIGHT,

Attorneys for defendant, Frederick
I. Richman.

MARTIN, HAHN & CAMUSI,

By WILLIAM P. CAMUSI,

Attorneys for plaintiff,

Lyda Tidwell.

[95]

orsed]: Filed Feb. 26, 1954.

f District Court and Cause.]

DEFENDANTS' EXHIBIT D

ORDER

and said plaintiff and defendant are desirous of relieving the Receiver of possession, control and management of the assets formerly designated and referred to as the Richman Trust, with the exception of money in bank and under the control of the Receiver;

Now, Therefore, It Is Hereby Ordered, that the Receiver, Roy E. Hallberg, shall be relieved of his active duties of management, control and possession of the assets known as the Richman Trust, at five o'clock p.m., Sunday, February 28, 1954, and that the said Receiver, Roy E. Hallberg, his agents and employees, and all other agents, servants and employees of the Richman Trust, give over control and possession to Lyda Tidwell, plaintiff, of all the assets of the said Richman Trust, excepting money in bank and under the control of the said Receiver, but [97] including all other said assets of the Richman Trust and the following apartment houses and their contents:

La Loma, located at 251 South Olive Street, Los Angeles, California;

Fountain Manor, located at 5165 Fountain Avenue, Los Angeles, California;

Oliver Cromwell, located at 418 South Normandie Avenue, Los Angeles, California;

Western Arms, located at 1057 South Western Avenue, Los Angeles, California; and

Further Ordered, that plaintiff, Lyda Tidwell, have exclusive possession, control and management of the above described assets, beginning at 5 o'clock p.m., Sunday, February 28, 1954.

Further Ordered, that the books and records pertaining to the Richman Trust and the assets thereof shall be given into the possession and control of plaintiff, Lyda Tidwell, but shall remain in their present location in the Oliver Cromwell Apartments, and neither plaintiff, Lyda Tidwell nor defendant, Frederick I. Richman, nor any other person shall remove the said books and records, or any part thereof, from said location until further order of the court, and all records shall remain in their present location except for legitimate entries and transfers to be made therein in the course of the management of the assets formerly known as the Richman Trust.

Further Ordered, that said books and records shall be made available at all reasonable times to said Receiver, Roy E. Hallberg, for the purpose of preparing his accounting for presentation to the court.

Done at St. Paul, Minnesota, this 25th day of February, 1954.

/s/ ERNEST A. TOLIN,

Judge

[98]

Witness my hand and seal of the court this 25th day of February, 1954.

[Title of District Court and Cause.]

PETITION FOR ALLOWANCE OF FEES
ATTORNEYS FOR RECEIVER

To the Honorable Ernest A. Tolin, Judge of
above entitled Court:

Come now Messrs. FitzPatrick & Whyte
John Whyte, as attorneys for Roy E. Hallber
Receiver of all the real and personal property
stituting the former Richman Trust, and for
petition for allowance of fees for legal ser
heretofore necessarily performed by them fo
on behalf of said Receiver from and after N
ber 30, 1953, to and including March 17, 195
spectfully represent and show as follows:

1. Richard FitzPatrick and John Whyte ar
at all times herein mentioned were attorneys
admitted to practice law in the above entitled C
and they are and at all times herein mentioned
engaging as co-partners in the general practi
the law under the firm name of FitzPatri
Whyte, with offices at 756 South Broadway, i
City of Los Angeles, State of California. Ri
FitzPatrick was duly admitted to practice law
courts of the State of California in December
and ever since [100] September 1919, he has
ticed law continuously in this state. John V
was duly admitted to practice law in all cour
the State of California in January 1941, and

practiced law continuously in this state.
petitioners FitzPatrick & Whyte and John
are and ever since December 2, 1953, have
e duly authorized and acting attorneys for
Hallberg, as Receiver of all the real and
l property constituting the former Richman
aid Roy E. Hallberg being sometimes here-
referred to as "the Receiver." In this con-
petitioners allege that on December 2, 1953,
eiver duly petitioned this Court for author-
employ legal counsel to advise him concern-
powers and duties as Receiver, to assist him
ection with all legal matters necessary for
tection, preservation or management of the
f the former Richman Trust, to assist him
ection with the preparation of petitions or
to this Court, and to act generally in any
legal matters that might arise in the course
administration of said assets. On December
by order duly signed and filed, this Court
zed and directed the Receiver to employ
FitzPatrick & Whyte and John Whyte of
geles, California, as legal counsel on a gen-
ainer and as an expense of administration
to represent him in the matters specified in
ve mentioned petition, and the Receiver did
ately employ said counsel.

n anticipation of and pursuant to said em-
nt above referred to in Paragraph 2, peti-

in connection with the conduct and carrying of the business of the Receiver of the normal business and affairs of the former Richman Trust and matters incident thereto. Petitioners have devoted a total of 91 hours of attorneys' time to the performance of said services as shown on daily time sheets kept by attorneys in the offices of FitzPatrick & Whyte. Of this total of 91 hours of attorneys' time, 88.8 hours are allocable to the services [101] of John W. Whyte and 2.2 hours are allocable to the services of FitzPatrick.

4. The nature of said legal services which have been necessarily so performed by petitioners is likewise shown on said daily time sheets and is as follows:

Nature of Legal Services Performed
Date—1953

November 30—Conference with Hallberg re appointment as Receiver. Study of Judge Tolin's memorandum of decision in the above entitled matter. Conference with Judge Tolin and Hallberg re duties of Receiver and his attorneys.

December 1—Conference with Hallberg and officers of Union Bank & Trust Co. re change of former Trust's bank account to name of Hallberg as Receiver of Assets of Former Richman Trust. Re proper accounting for checks written by plaintiff Tidwell or defendant Richman prior to Hallberg's appointment as Receiver. Whyte accompanied Hallberg on visits to La Loma, Fountain Manor,

administration of former Trust properties, collection of rents, etc.

September 2—Prepared petition and order for appointment of FitzPatrick & Whyte and John as attorneys for Receiver. Conference with regarding his bond as Receiver and making arrangements with Fidelity and Deposit Co. of Maryland for issuance of bond. Telephone call to Camusi (plaintiff's attorneys) for information re developments in appointment of Receiver. Appearance in Judge Tolin's chambers and presentation of Receiver's petition for authority to employ counsel and order employing said counsel—signed and filed. [102]

September 3—Conference at Richman's office with Messrs. Richman, Harrison, Hallberg and regarding assets comprising former Richman Trust and manner in which trust accounts had been kept. Arrangements made with Union Bank & Trust Co. for honor checks drawn by Richman. Advising Receiver re insurance matters and telephone call to Dulley, insurance broker.

September 7—Telephone call from Camusi regarding information on Receiver's activities. Telephone call to Harrison, who had been hired as a reporter by the Receiver, re progress being made in orderly administration of receivership.

September 10—Telephone call to Harrison for report on progress being made in setting up receiver-

December 16—Telephone call from Camusi inquiring about progress of receivership. Telephone call from Mrs. Hallberg re problems incident to opening new bank account with branch of Citizens National Bank & Trust Co. and telephone conference with official of that bank.

December 17—Telephone call from Hallberg re petition for authority to pay Christmas bonuses. Telephone call from Hallberg re petition for authority to renovate individual apartments in various apartment buildings.

December 18—Telephone calls to and from Hallberg to obtain facts necessary for preparation of petition for authority to pay Christmas bonuses. Preparation of said petition. Telephone call from Camusi asking for information concerning progress of receivership. Telephone call from Hallberg re above mentioned petition. Presentation of petition for authority to pay Christmas bonuses and interest thereon to [103] Judge Tolin in chambers—petition signed and filed. Telephone call to Harrison asking him to issue bonus checks. Conference with Hallberg re factual data needed to prepare petition for authority to renovate individual apartments. Telephone call from Harrison re manner of paying Christmas bonuses.

December 21—Telephone call from Hallberg re preparation of petition for authority to renovate individual apartments. Consideration of local rules of Federal District Court re reports and accounts.

tion of petition for authority to renovate
al apartments and other matters.

ber 23—Preparation of petition for author-
renovate individual apartments. Telephone
Hallberg for information needed for said

ber 24—Conference with Hallberg at Oli-
mwell Apartment Hotel re petition for au-
to renovate individual apartments, transfer
insurance policies to a mutual company, Re-
first report to be filed with Court, carrying
Richman's contracts to purchase smog con-
nerator equipment, bookkeeping problems,
er matters.

ber 28—Telephone calls to and from Harri-
installation of smog control incinerator
nt at Canterbury and Oliver Cromwell
nts and re handling of petition for author-
novate individual apartments.

ber 27—Study of files with reference to
ion of smog control incinerator equipment
rbury and Oliver Cromwell apartments and
ation of liability of Receiver to carry out
r's contracts with Air Pollution Control,
r purchase and installation of said [104]
nt.

ber 29—Taking petition for authority to
e individual apartments to Judge Tolin's
s. Telephone call to Harrison re court order

January 4—Conference with Judge Tolson in chambers re contents of first report to be submitted by Receiver, petition for authority to renovate individual apartments, proposed petition for authority to inventory assets, and other matters. Telephone calls from Mrs. Hallberg re these matters. Telephone call to Harrison re problems incident to inventorying all furniture and fixtures in the apartment buildings. Telephone calls to Camusi and Enright (one of defendant's attorneys) requesting them to agree not to require a detailed inventory of every item of furniture and fixtures in the apartment houses—they both stated it was unnecessary.

January 5—Telephone call from Mrs. Hallberg re status of petition for authority to renovate individual apartments and necessity for inventorying furniture and fixtures. Conference with Judge Tolson in chambers re said petition for authority to renovate. Telephone call to Hallberg re forthcoming hearing on petition for authority to renovate and visit of plaintiff's appraisers to apartment buildings.

January 8—Conference with Mrs. Hallberg re inspection of apartment houses being made by plaintiff's appraisers and re inspection of record-keeping books to be made by plaintiff's accountants. Telephone call to Camusi re these matters. Telephone call from Enright re hearing on petition for authority to renovate individual apartments and

re inspection of books by his accountants
 phone call to Mrs. Hallberg re this subject.
 ry 9—Telephone call from Hallberg re pos-
 sors made by Richman in his accounting for
 properties and possibility of tax refunds as a
 hereof—also re first report to be made by
 , renovation of individual apartments, and
 matters.

ry 11—Telephone call from Hallberg re pos-
 of tax refunds on account of items charged
 man as improvements rather than expenses.

ry 15—Telephone calls from Lawrence Mar-
 of plaintiff's attorneys) and from Camusi
 rs to be considered at hearing on Receiv-
 tion for authority to renovate individual
 nts. Conference with Hallberg in prepara-
 said hearing. Court appearance re hearing
 petition—petition granted.

ry 19—Preparing draft of Receiver's re-
 lephone call to Harrison re data to be in-
 herein.

ry 25—Instructing and working with Har-
 preparation of schedules to be attached to
 's report. Drafting Receiver's report.

ry 26—Conference with Hallberg re facts
 or preparation of his report. Telephone call
 musi re proposed meeting with Hallberg
 yte to consider prospects for future income
 apartment houses.

for alleged violation of California Health Safety Code in connection with operation of incinerator at Oliver Cromwell.

January 28—Conference with Harrison re preparation of accounting [106] data to be incorporated in Receiver's report.

January 29—Telephone call from Harrison re criminal citation in connection with incinerator at Oliver Cromwell. Preparation of ex parte order and affidavit extending time for Receiver to file his report and procuring Judge Tolin's signature thereon. Telephone call from Mrs. Hallberg re efforts made to dismiss above mentioned criminal citation. Telephone call to Mr. Tow in office of Air Pollution Control District re said criminal citation. Telephone conversation with Judge Tolin re Receiver's motion—the Judge decided to modify Rule 18(b) of local Federal District Court rules so as to postpone filing thereof until March 20, 1954, in order that it might cover a full three months period. Telephone call to Harrison re delay in filing above mentioned report—he requested advice re problem of tenant who owed rent and had left clothes in his apartment. Conference with Hallberg re his report. Telephone call to Camusi re delay in filing said report.

February 1—Appearance in Department 33 of Los Angeles Municipal Court re arraignment of Mrs. McConnell, manager of Oliver Cromwell, Inc., being a defendant in the criminal action brought by the City of Los Angeles for alleged violation

ment set over until February 23. Conference with Mr. Tow of Air Pollution Control Dis-said criminal action. Telephone call to Har-ging him to have Air Pollution Control, Inc. immediately with installation of smog con-shipment at Canterbury. Telephone call from Hallberg re result of court hearing. Dictating Receiver's report and revising same. [107]
 January 2—Telephone call from Harrison re tax to be filed by Receiver. Examination of de-s moving papers re new trial. Telephone and from Camusi re tax problems and neces-sary, for moving for appointment of a per-receiver. Telephone call to Harrison re- names of known creditors to be notified on motion for appointment of Hallberg permanent receiver. Telephone call from Hall-tax problems. Conference with Judge Tolin-bers re appointment of Hallberg as a per-receiver.

January 3—Telephone call to Camusi re his motion for appointment of Hallberg as a permanent receiver. Telephone calls from Harrison to be included in list of known creditors. Letter from Enright as to who should peti-distribution of income. Telephone call from Hallberg re tax problems, removal of part of at Canterbury, and smog control matters. Conference with Mrs. Hallberg re such problems as

District re proposed conference with City
ney's office and possible inability of Air Po
Control, Inc. to perform their contract for in
tion of incinerator equipment at Canterbury.
phone call to Air Pollution Control, Inc., re
ability to install smog control incinerator equi
promptly at Oliver Cromwell and Canterbur
livering list of known creditors to Camusi a
taining from him copy of trust instrument f
in determining who should file 1953 incom
return.

February 4—Telephone call from Harris
additions to list of known creditors and pass
of this information to [108] Camusi. Telephon
from Enright and discussion of smog control
lems, removal of parapet at Oliver Cromwe
other matters. Telephone call from Mrs. Hallb
tax and smog control matters. Letter to Air
tion Control District re progress being made t
installation of incinerator equipment. Tele
call from Harrison re problems of tenant
haven't paid rent, tax information, and other
ters.

February 6—Checking California lien law
cable to apartment houses in order to advise
son what to do with clothing left by guest wi
paid bill at Oliver Cromwell.

February 8—Telephone call to Harrison ad
him what to do about guest with unpaid bill a
ver Cromwell. Revising draft of Receiver's r

Hallberg and Whyte re above mentioned complaint charging violation of California and Safety Code on account of smoke from tor at Oliver Cromwell — complaint dis-

ary 10—Letter to Camusi showing income ense of former Richman Trust for 1953. Receiver's report and petition for fees.

ary 12—Telephone call from Camusi re tax and hearing on motion for appointment of g as a permanent receiver. Telephone call arrison re his discharge by Hallberg.

ary 13—Telephone call to Hallberg and dis- of problems incident to hearing on motion appointment as a permanent receiver, ter- n of Harrison's employment, and necessity aring and filing a schedule of known cred- thin five days after hearing on his appoint- 09] as a permanent receiver.

ary 15—Court appearance re hearing on to make Hallberg a permanent receiver— ion, together with defendant's motions for rial, etc., set over until March 8. Telephone Mrs. Findeisen, the new bookkeeper, not to list of known creditors. Telephone call from allberg re removal of parapet at Oliver ll. Drafting Receiver's report and petition vance of fees.

ary 16—Drafting petition for allowance of

notice of hearing on Receiver's report, his petition for allowance of fees, and petition of his attorneys for allowance of fees.

February 18—Revising draft of Receiver's report.

February 25—Telephone call from Camusi re termination of receivership by settlement of case. Telephone call to Hallberg reporting on this development.

February 26—Attending conference in Judge Lincoln's chambers re settlement of case. Telephone call from Mrs. Hallberg re results of said conference.

February 27—Revising Receiver's report and petition for fees, as well as petition for fees to attorneys for Receiver, as necessitated by Court's order of February 26, relieving Receiver of his duties of active management as of February 28, 1954.

March 1—Conference with Mrs. Hallberg, bookkeeper at Oliver Cromwell re preparation of schedules to be attached to Receiver's report, summary of Receiver's operations for January and February 1954, and re problems connected with turn-over of assets to Mrs. Tidwell. Telephone call to Camusi re problems connected with turn-over of assets [110] to Mrs. Tidwell, payment of bills. Telephone call to Enright re schedule attached to Receiver's report showing creditors and amounts of their claims.

March 2—Dictating and revising statement of services performed by Receiver during January and February 1954, to be incorporated in his report.

over to Mrs. Tidwell, and re Receiver's ac-
g. Telephone calls to and from Mrs. Hall-
documents to be turned over to Camusi. De-
cident to preparation of Receiver's report.
g statement of services rendered by attor-
Receiver for inclusion in their petition for
telephone call to Camusi re delivery of title
ats to his office.

4—Telephone calls to and from Mrs. Hall-
payment of bills, particularly those accru-
r February 28, 1954, and re turn-over of
r's former files. Telephone calls to Camusi
right re these matters.

5—Telephone call to Mrs. Findeisen re
information needed for Receiver's report.

7—Conference with Receiver and Mrs.
g re problems incident to Receiver's final
ng and preparation of schedules to be at-
o his report.

8—Dictating additional material to be in-
ced in Receiver's report.

9—Incorporating additional material in
e's report and petition for fee. Telephone
Camusi re closing of Receiver's books and
t of bills received after March 1, 1954.

10—Conference with Mrs. Hallberg and
ndeisen, the bookkeeper, at the Oliver Crom-
Receiver's final report and preparation and
of schedules to [111] be attached thereto.

tion for fee as well as notice of hearing on v petitions and reports of the Receiver and his neys.

March 12—Adding material to Receiver's and telephone call to Mrs. Hallberg for data incorporated therein. Telephone calls from Hallberg re progress being made on schedules attached to Receiver's report.

March 13—Going over draft of his report schedules to be attached thereto with the Re

March 15—Conference with Judge Tolin in bers re petition of Receiver's attorneys for ance of fees. Revising said petition as well ceiver's report and petition for fee.

March 17—Telephone conference with Cam closing of Receiver's books and re the report petitions to be filed by him and his attorneys. reading final copies of Receiver's report and tion for fee and assembling schedules to tached thereto. Proofreading final copies of tion of Receiver's attorneys for fees. Telephon to Fidelity and Deposit Company of Maryla possible rebate on premium paid for Rec bond.

5. Petitioners desire to call the Court's att to the fact that certain of the legal services inabove referred to are in the nature of extr nary, rather than ordinary, services. Into this gory would fall the services rendered in conn with defending the Receiver and his agents a

the Air Pollution Control District for allocation of sections of the California Health Code on [112] account of smoke issuing from the incinerator at the Oliver Cromwell. By the joint efforts of petitioners and the Reine Air Pollution Control District and the Los Angeles City Attorney's office were persuaded to take this action. This smoke condition resulted in failure to install smog control devices in the incinerators at the Oliver Cromwell and at the Canoga Park, a duty which Frederick I. Richman, the managing agent and a trustee of the former Richman Trust, should have performed during his long administration of the assets of said Trust. Instead, the problem was passed on to the Receiver who was unable to defend a criminal complaint charging violation of law for which he was in no way respon-

sible. Petitioners allege that the reasonable value of ordinary legal services as in Paragraph 4 set forth, exclusive of the extraordinary services hereinabove referred to in Paragraph 5, is the sum of \$3,000. Petitioners do not wish to indicate the sum as representing the reasonable value of extraordinary services but prefer that this Court should determine in its discretion what additional amount should be awarded to petitioners for performance of said extraordinary legal services. With reference to this matter of fixing the rea-

and final report of Receiver and petition for allowance of fee to Receiver filed concurrently herewith.

Wherefore, petitioners pray that this Court grant and enter its order fixing and allowing the sum of \$3,000.00 as a reasonable attorneys' fee to FitzPatrick & Whyte and John Whyte, the attorneys for the Receiver herein, for the ordinary legal services heretofore necessarily performed by them for and on behalf of said Receiver from and after November 30, 1953, to and including March 17, 1954, together with such further sum as this Court may in its discretion determine to be a reasonable attorney's fee for the extraordinary legal services necessarily performed by them for and on behalf of the Receiver during the same period, and that said order authorize and direct the Receiver to pay said sum or the balance thereof forthwith to FitzPatrick & Whyte from funds on deposit in the Third and Western Branch of [113] Citizens National Trust & Savings Bank, Los Angeles to the account of Roy E. Hallberg, Receiver of the Assets of the former Rio del Norte Trust.

Dated: March 18, 1954.

FITZPATRICK & WHYTE,
JOHN WHYTE

/s/ By JOHN WHYTE,
Petitioners

Duly Verified.

AND FINAL REPORT OF RECEIVER
D PETITION FOR ALLOWANCE OF
E TO RECEIVER

Honorable Ernest A. Tolin, Judge of the
ve Entitled Court:

s now Roy E. Hallberg, as Receiver of all
l and personal property constituting the
Richman Trust (hereinafter sometimes re-
o as "petitioner"), and for his first and final
and his petition for allowance of a fee to
as Receiver for the period commencing De-
1, 1953, to and including February 28, 1954,
ully represents and shows as follows:

November 30, 1953, by order of this Court
igned, docketed and entered, petitioner was
ed Receiver of all the real and personal
y constituting the former Richman Trust.
he terms of said order petitioner was em-
and directed forthwith to take possession
f the properties and assets which are, or
etermined to be, a part of said former Rich-
ust, including all books of account, records
s pertaining to said former Trust in the pos-
or under [116] the control of Frederick I.
n or his agents. Said order also directed pe-
to give a bond in the sum of \$75,000, and

tioned this Court for authority to employ counsel to advise him concerning his powers and duties as Receiver, to assist him in connection with all legal matters necessary for the protection, preservation or management of the assets of the former Richman Trust, to assist him in connection with the preparation of petitions or reports to this Court and to act generally in any and all legal matters that might arise in the course of his administration of said assets. On December 2, 1953, by order signed and filed, this Court authorized and directed petitioner to employ Messrs. FitzPatrick & Vanecko and John Whyte of Los Angeles, California, as counsel on a general retainer and as an executor of administration herein, to represent him in all matters specified in the above mentioned petition and petitioner did promptly employ said counsel.

3. On or about December 2, 1953, petitioner commenced to take possession of the properties and assets constituting the former Richman Trust. Among the first properties over which he assumed possession and control were the five apartment houses which constitute the principal assets belonging to said former Trust, to wit:

Canterbury Apartment Hotel, 1746 North Hollywood Boulevard, Los Angeles 28, California;

Fountain Manor Apartment Hotel, 5165 Fountain Avenue, Los Angeles 26, California;

Oliver Cromwell Apartment Hotel, 418 Normandie, Los Angeles 5, California;

ma Apartment Hotel, 251 South Olive, Los Angeles 13, California.

On or about December 18, 1953, petitioner had possession of all or [117] substantially all of the real and personal property constituting the former Richman Trust, including the books of account, documents, cancelled checks, bank statements, correspondence and files pertaining to said Trust. Attached hereto as Schedule A and a part hereof is a list of all the known assets and properties which, according to petitioner's best knowledge and belief, constituted a part of the former Richman Trust and over which petitioner had possession, custody and/or control.

On February 26, 1954, by order of this Court entered, signed and filed, petitioner was relieved of his duties of management, control, and possession of the assets of the former Richman Trust as of the 5:00 o'clock p.m. on February 28, 1954, and his agents and employees were directed to turn over possession and control to plaintiff Lyda Tidwell of all said assets, excepting only money in hand and under petitioner's control. Pursuant to the terms of said order petitioner has duly surrendered possession and control to plaintiff Lyda Tidwell of all said assets, except for said money in hand which is still under his control.

Petitioner's operations with reference to the real and properties of the former Richman Trust,

mer Trust and matters incidental thereto, from after December 1, 1953, to and including February 28, 1954, may be summarized as follows:

December 1953

Arranged for the bank account of the former Richman Trust at the Union Bank & Trust Los Angeles to be transferred to an account name of Roy E. Hallberg, as Receiver of the of the Former Richman Trust.

Hired Roy Harrison, a practical accountant formerly employed by Frederick I. Richman, as time bookkeeper at a salary of \$475 per month. Harrison was employed because of his familiarity with the assets and properties of the former Richman Trust, the routine operations incident to their management, and the method of accounting used [118] connection therewith.

Petitioner and his agents began collecting from the five apartment houses owned by former Trust and deposited the same in the above mentioned bank account. This duty has been continuously and regularly performed over the period time above mentioned. In this connection petitioner or his agents visited each apartment building at least three times a week and if any rents were in hand they were picked up in order that no substantial amount might be allowed to remain at the building. Furthermore, on the occasion of each such vacancies were checked in the particular apartment building.

out December 1953, and January and February 1954.

ved a blanket policy of compensation insurance for all five apartment houses.

first installment of 1954 County taxes.

aged for transfer of the current files of the Richman Trust to a low-rent bachelor apartment at the Oliver Cromwell where petitioner set up his office for administration of the receivership.

ected the various apartment houses and the apartments therein, paying particular attention to the condition of the physical plant, including boilers, refrigeration system, water heaters, and other fixtures, etc.

revised the refurbishing of draperies, arranged for painting and carpeting of one apartment; ordered linens, checked for fire damage, and ordered new curtains, all at the Fountain Manor; ordered repair of the refrigerator system, arranged for repairs in several apartments, patched the carpet in one apartment, cleaned chairs, and ordered linens at the Western Arms; and arranged for a Christmas tree to be placed in the lobby of each of the five apartment houses.

ough his counsel, the Receiver petitioned this Court for authority to pay Christmas bonuses to the employees at all five apartment [119] houses, which authority was granted by order of this Court, and which bonus checks were prepared and dis-

rates on renewal of fire insurance policies expiring on the Oliver Cromwell and the La Loma. Subsequently ordered a three year fire insurance policy for the Oliver Cromwell from Liberty Mutual because of a discount of 10% on the standard rate plus a 20-25% dividend at the expiration of the policy.

Inspected poor tile conditions in various individual apartments at the Western Arms and solicited for bids to correct the worst of said conditions.

Established a bank account at the Third Western Branch of the Citizens National Thrift Savings Bank of Los Angeles, this being a convenient place for deposit of rents.

Made plans for revision of the accounting system for the year 1954 in order that full information regarding the operation of each apartment would be available.

Reviewed contracts with Air Pollution Control, Inc. made by Richman together with other requirements for installation of smog control devices in the generators at the Oliver Cromwell and the Canteen.

January 1954

Supervised repainting of the La Loma lobby.

Through his counsel, the Receiver petitioned the Court for authority to renovate individual apartments in the five apartment houses, which authority was granted by court order.

Accompanied the appraisers designated by

ed bids on painting of individual apart-

ned vacant apartments at Fountain Manor
particular attention to conditions needing re-
habilitation.

red and testified in court re petition for
y to renovate individual apartments. [120]
red with upholsterer.

ed linens and purchased stove at Barker

outed payroll checks.

ed bids for painting at Fountain Manor
Loma.

ased lamps for Oliver Cromwell and pur-
raperies for Western Arms, Oliver Crom-
l Fountain Manor.

vised painting of two apartments at West-
s and two apartments at Fountain Manor.
rred with Camusi re method of capitalizing

ted and reinspected painting at Western

ted ceilings at La Loma.

yed area surrounding Western Arms to de-
comparative rents.

rred with Whyte (Receiver's attorney) re
's report to this Court.

ased plastic tablecloths for La Loma.

ed bids for power lines at Oliver Cromwell.

conferred with Mr. Tow re criminal citation because of smoke coming from incinerator at Cromwell.

Inspected parapet at Canterbury and discussed with contractor problem of removing part of parapet as required by City of Los Angeles ordinance.

February 1954

Conferred with Air Pollution Control, District 1 re installation of smog control equipment in incinerator at Oliver Cromwell.

Numerous telephone calls to Mr. Tow at Air Pollution Control District re above mentioned criminal citation.

Conferred with Mr. Peckham at Building Department of City of Los Angeles re removal of part of the parapet at the Canterbury; also conferred with contractor re same matter. [121]

Purchased ceiling fixtures at Sears Roebuck.

Conferred with employees of Director of Internal Revenue re tax status of former Richman and assisted bookkeeper in preparation of tax return.

Selected upholstery materials for Western and selected carpeting at Barker Bros.

Arranged for painting at La Loma and inspected the same.

Conferred with Gordon Larson, Director of Air Pollution Control, re dismissal of above mentioned criminal citation.

of complaint charging violation of California
and Safety Code sections by reason of smoke
from incinerator at Oliver Cromwell—com-
missed.

and with Air Pollution Control, Inc. about
installation of smog control incinerator
at Canterbury.

vised painting at Fountain Manor.

ed linens and purchased bath rugs for La

nated employment of Harrison, the book-
and helped him balance his books.

new bookkeeper, Mrs. Jean Findeisen, at
of \$300.00 a month and assisted her in
bookkeeping routine.

igated and prepared claim for workmen's
ation insurance for manager of Oliver
ll and claim for public liability insurance
t at Oliver Cromwell.

ected apartments at Oliver Cromwell for rain
following severe storm.

rred with contractor re parapet removal at
ury and need for caulking at Oliver Crom-
owing heavy rain.

vised major repair of refrigerator equip-
Western Arms, conferred with various re-
ion maintenance men, and selected new con-
give refrigeration service.

ased draperies for Fountain Manor and

Conferred with plumber re repairing water at Fountain Manor.

Prepared and filed fiduciary income tax re

6. Attached hereto as Schedule B and made hereof is a schedule of the receipts and disbursements of the Receiver for the period commencing December 1, 1953, to and including February 28, 1954. Attached hereto as Schedule C and made a part hereof is a schedule of the disbursements by the Receiver as directed by the Court covering liabilities incurred prior to February 28, 1954, not paid until after that date. Also attached as Schedule D and made a part hereof is a list of the known creditors of the former Richman Trust with names, addresses, and amounts of claims including both specific and contingent claims, as of the close of business on March 10, 1954.

7. Petitioner desires to make the following further representations to this Court concerning the operation of the assets and properties of the former Richman Trust:

During the three months in which petitioner managed the five apartment buildings constituting the major portion of the assets of the former Richman Trust, his first consideration has been to maintain the occupancy factor high. This has been accomplished to a satisfactory degree. Renovation and improvements have been made in individual apartments only as such apartments became vacant when, in the opinion of petitioner, it became

presentations made in the Receiver's petition state individual apartments approved by order of this Court on January 15, 1954. Further, the limited renovation was possible because of the fact that the cash position in the receivership had not been too strong.

The cash balance as of December 1, 1953, that became petitioner assumed his duties as Receiver was \$5,990.30. As of that [123] date a prepayment of \$3,827.66 on a liability insurance policy; there were accrued bills from November, 1953, amounting to \$6,943.91; and there were taxes of \$60.97 to pay on December 10, 1953. This tight cash position has continued principally on account of the following substantial contingencies, to wit: Contracts with Air Pollution Control, Inc., for installation of smog control equipment in the incinerators at the Canterbury and Oliver Cromwell in the sum of \$2,658.80; a proposed expenditure of \$3400 for removal of a portion of the parapet at the Canterbury to conform with a new ordinance of the City of Los Angeles; life insurance policies on the Oliver Cromwell at La Loma amounting to \$1,835.46 and \$1,000.00 respectively; and a second installment of property taxes due April 10, 1954, in the sum of \$31. Accordingly, it has been necessary for the Receiver to proceed cautiously with any program of renovation. In this connection, whereas approxi-

materially in the other apartment buildings the Canterbury there has been no painting the period of the receivership.

Because a great deal of the petitioner's time involved in analyzing and appraising the condition of the five apartment houses, he feels that some of their salient factors as he has observed them should be set out in this report as follows:

Canterbury: The physical condition of this apartment building and its furnishings is the best of the five apartment houses. Largely because of the personal following and the activity of the manager, Mrs. Gregg, there have been relatively few vacancies. The demand for apartments generally is expected to drop off a bit by April 1954, at which time the petitioner had planned to paint approximately 100 individual apartments in this house.

Air Pollution Control, Inc. has just completed the installation of an Oxy-Aire unit in the Canterbury incinerator, which is awaiting approval of the Air Pollution Control District. [124]

During the Spring of 1953, after Mr. R. J. [redacted] had signed a contract for parapet correction, the Los Angeles City Council amended the parapet code. The Los Angeles City Building Code Department of Building and Safety then stated that its standard Sketch A should be used. This necessitated a revised bid which amounted to \$442,000. The petitioner's agent went to the City Hall and talked

ne if the parapet above the entrance court
e allowed to remain. Following the inspec-
bid price was reduced as of February 4,
\$3418. Petitioner has not yet signed a con-
parapet removal because it seems desirable
one this work until after the peak of the
eason has passed.

ain Manor: This building has the weakest
plant of the five apartment houses. More-
s located in a fringe area. The unit heaters
its apartments are non-vented, a source of
l trouble should restrictive legislation be
A large majority of the apartments need
, carpeting and other refurbishing. Even un-
tioner's necessarily limited program of up-
he has deemed it essential to paint over
these apartments and within two days after
relieved of his active duties of management
uary 28, 1954, several apartments were va-
which need renovating.

umbing situation is particularly bad. Elec-
is taking place between some of the copper
nd the cast iron pipes. The copper joints
en used in making some emergency repairs
ks are continually occurring at the joints
he remaining cast iron pipe which is cor-
Due to the fact that the return hot water
e located in the confined area between a
urth floor ceiling and the roof, it is prac-

tioner's rough estimate of the cost of new work to correct that portion of the plumbing system which is presently giving trouble is \$3500. [12]

La Loma: Physically this building is badly worn down. Although the rental rates are low, the Beverly Hills area is developing many vacancies. It has been necessary for petitioner to do some painting in various individual apartments but much more is needed for. It has also been necessary to paint the exterior. Obviously, the relatively low rental rates do not allow for extensive renovation.

Oliver Cromwell: It is interesting to note that although four of the five apartment houses belonging to the former Richman Trust have rental rates which are from 4% to 15% above those of comparable apartment buildings, the Oliver Cromwell, whose rates on an average are lower than those of the nearby apartment buildings, has the best location of the five apartment houses in the former Richman Trust. Accordingly, it seems to petitioner that after renovation the rates at this apartment building should be increased. Had the receivership continued it was petitioner's intention to upgrade various individual apartments if and when vacancies occurred. However, lamps and draperies have been purchased for this building. Some of the furnishings thus replaced were taken to the other buildings.

Air Pollution Control, Inc. has just completed installation of an Oxy-Aire unit in the incinerator which has yet to be approved by the Air Pollution

of this building has never had water-proof-
the caulking around the windows has badly
ted. This should be done as well as a com-
int job on the trim of the building. The
around the window frames is dried up,
and broken out. Glass in many of the win-
loose and needs reputtying. During the
heavy rain storm water entered around the
frames and spoiled some relatively well-
surfaces. Damage was particularly notice-
the east side of the building and upon sur-
came apparent to petitioner that some cor-
work was urgent. Several bids were obtained
ng on an average of about \$650 covering
[126] and caulking and trim on the east
the building only. Of course, the whole
needs this treatment.

the fire insurance policy on the Oliver
l expired January 1, 1954, petitioner placed
policy with Liberty Mutual at an original
10% under standard rates. Furthermore,
Mutual has paid a dividend of at least 25%
re policies since 1908. Fire insurance poli-
the other apartment houses were not can-
espite this potential saving because such
ion would have involved short term rates
period in force or a loss for the property

rn Arms: This building is definitely lo-

Much more painting and refurbishing ought to be done. What lamps were needed were brought from the Oliver Cromwell. Petitioner has been reluctant to spend large sums in this building in view of the questionable desirability of retaining it as one of the assets of the former Richman Trust. In the event that there should be extensive renovation in this building, it is the opinion of petitioner largely because of its location the income derived therefrom would be particularly vulnerable in the event there be an economic down-trend.

8. With respect to the amount of the fee which should be allowed to petitioner for his services as Receiver herein, petitioner prefers to leave the matter to the judgment and discretion of this Court. In this connection petitioner is informed and believes and therefore alleges that the customary usual fee for property management in the Los Angeles area is 5% of gross income.* Petitioner further alleges [127] that defendant Frederick I. Richman, who administered the assets and property of the former Richman Trust prior to December 1953, received approximately 10% of the gross income as his management fee, plus att

*5% of the gross income figure of \$94,000 shown on Schedule B attached hereto is not equivalent to 5% of gross income during the entire 12 months period of the active receivership, from December 1953, and January and February 1954, for the reason that a representative of petitioner (Tidwell) collected cash receipts from some of the

special work performed by him as an attorney also respectfully calls the Court's attention to the fact that his duties as Receiver were relatively more burdensome than they have been had the receivership continued for a period of time on a normal well-oiled basis in that heavy duties were imposed upon a Receiver by reason of his taking possession of unknown assets and familiarizing himself with them, the setting up of his books, the installation of his system of management, and then, only a few months later, the necessity for closing up the receivership and surrendering possession of the assets. It could be pointed out that when the Receiver was appointed, he was faced with the task of modernizing and renovating numerous individual apartments which had fallen into a state of obsolescence and required repair under said Richman's administration. The petitioner is further informed and believes and the petitioner alleges that said Frederick I. Richman contracted to manage the assets of the former Trust for so long as both of the beneficiaries thereof, viz., himself and his sister, Mrs. [Name], might live; whereas not only has petitioner's tenure as Receiver herein been in fact limited to a brief three months' period, but it was at the time that the Receiver was appointed that the term of office would be relatively short. For the reasons mentioned above it seems to the

for a three months' period of service in the place of a normal long-term receivership.

9. Petitioner further represents to this Court that his counsel, Messrs. FitzPatrick & Whyte, John Whyte, have rendered necessary and valuable services to him in connection with his administration of the affairs of the former Richman Trust and matters incidental thereto for which he should be adequately compensated, the nature and extent of said services being more particularly set forth in the petition for allowance of fees for the attorneys for Receiver, filed concurrently herewith.

Wherefore, Roy E. Hallberg, as Receiver of the real and personal property constituting the former Richman Trust, prays:

1. That his first and final report to this Court, as hereinabove set forth, including the schedule attached hereto and made a part hereof, be approved;

2. That this Court make and enter its order fixing and allowing a reasonable fee to the Receiver herein for the services heretofore necessarily rendered and performed by him in carrying on the normal business and affairs of the former Richman Trust and matters incidental thereto from and after December 1, 1953, to and including February 1, 1954, and that said order authorize and direct the immediate payment of said sum so fixed by said order to the Receiver from funds on deposit in the

E. Hallberg, as Receiver of the Assets of
 the former Richman Trust;

that after payment to the Receiver of such
 fee as may be fixed by this Court and
 payment to the attorneys for the Receiver of
 the attorneys' fee to be fixed by this Court,
 the Court make and enter an appropriate order
 vesting the Receiver of all further control over
 the responsibility for all moneys in bank belonging
 to the former Richman Trust and relieving and ex-
 relieving the Receiver from all responsibilities in
 connection with or arising out of the ad-
 ministration of the assets of the former Richman

Trust and such other, further or different relief as
 may be just and proper.

Witness my hand and seal this 18th day of
 March, 1954.

/s/ ROY E. HALLBERG,

Receiver

[129]

SCHEDULE A

A list of all known assets and properties con-
 stituting a part of the former Richman Trust
 in which the Receiver assumed possession,
 custody, and/or control.

The Canterbury Apartment Hotel, at 1740
 Cherokee Avenue, Hollywood. Including
 Deed recorded in Book 28420, Page 223. Bill

also covers the Fountain Manor Apartments and the Fountain Manor Garage.

2. The Fountain Manor Apartments, at 418 Normandie, Los Angeles. Including Title Insurance Policy No. 3292694. Deed recorded in Book 20614, Page 28. Title Insurance Policy No. 1736449. Survey of Apartments and Garage Buildings. Unrecorded Release of Hotel Mortgage, dated January 10, 1947, by John Hancock Life Insurance Company. Also cancelled Assignment of Rents. Unrecorded bill of Sale including furniture. Lease covering garage, together with Assignment of Lease of Richman Trust to Green to Herschel E. Watson.

3. La Loma Apartments, at 251 South Olive, Los Angeles. Including Grant Deed recorded in Book 20131, page 213, Bill of Sale. Title Insurance Policy No. 3028784. Grant of Telephone Right-of-Way. Combination of safe. Liberty Mutual Fire Insurance Policy FC-64B 107480.

4. Oliver Cromwell Apartments, at 418 Normandie, Los Angeles. Including Title Insurance Policy No. 3292694. Deed recorded in Book 20614, Page 133. Letter from Pacific Mortgage Corporation, dated September 6, 1950. Bill of Sale. Letter from Mutual Benefit Life Insurance Co., dated October 10, 1950. Combination of safe. Certificate of Insurance, Lloyd's No. 42787—Earthquake Insurance, Certificate of Insurance, Liberty Mutual, No. 64 107389—Fire and Extended Coverage.

Policy No. 1251512-A. Grant Deeds recorded
18405, Page 150; 18405, Page 151; 18405,
6. Bill of Sale. Unrecorded Release of Chat-
page. Second Bill of Sale.

Colorado Land Oil Royalty, containing unre-
 suitclaim Deed executed November 24, 1938.
 rn County Acres. Including Deeds recorded
 1935; February 13, 1937. Telephone Right-
 Grant. Letter and Plat from County Sur-
 ated December 27, 1944.

in Bernadino Acres. Including Deeds re-
in Book 267, Page 377, and in Book 1187,
3, San Bernadino County. Consolidated
Insurance Policy 82994. Survey.

T. Brookshire, Loan, containing Trust and Chattel Mortgage dated December 9, 1946, December 21, 1946 in Book 1996, Page 215, Records of San Bernadino County, together for \$5,000.00. Pioneer Title Insurance 74745. Certificate for one (1) share Crestage Mutual Service Company No. 1572CV. Assurance Co. Policy No. 837158 for \$9,-expiring July 30, 1956. Four (4) Assign-

12. Associated Gas & Electric Co. containing (5) certificates for fifteen (15) shares Class stock in the name of F. H. Richman, all endorsed with signature guaranteed, all dated in 1931 and 1931.

13. Nevada State Gold Mines Certificate 7382 shares Second Preferred. Certificate 231,047 $\frac{1}{5}$ shares Common stock, and correspondence.

14. Southwest Oil and Development — Correspondence.

15. Insurance Policies: Associated Industries Corporation—Standard Workmen's Compensation and Employers' Liability Policy No. C 48-091 American Indemnity Company's Comprehensive Liability Policy No. CL 13828.

And—All books of account, records, documents, cancelled checks, bank statements, correspondence and files pertaining to the former Richman estate as more particularly hereinafter set forth:

1. Information Returns.
2. Richman Trust Payroll.
3. Fire Insurance.
4. Withholding Returns.
5. Nagel-Richman Compensation Insurance.
6. Unemployment Correspondence.
7. Social Security.
8. Unemployment Returns.
9. Unemployment Statement of Charges.
10. Nagel-Richman Public Liability Insurance.

Schedule A—(Continued)

Anterbury—Monthly Reports.

Anterbury—Laundry.

Anterbury—Milk.

Anterbury—Telephone.

Anterbury—Paid Bill File—January 1, 1953
to December 31, 1953.

Anterbury—Paid Bill File—January 1, 1954

Anterbury—Rent Receipts.

Anterbury—General.

Colorado Oil Royalty.

Countain Manor—Telephone.

Countain Manor—Laundry.

Countain Manor—Paid Bill File—August 1,
to December 31, 1953.

Countain Manor—Paid Bill File—January 1,

Countain Manor—Transient Correspondence.

Countain Manor—General.

Countain Manor—Rent Receipts.

Countain Manor—Monthly Reports.

La Loma—Rent Receipts.

La Loma—Paid Bill File—July 1, 1953 to
December 31, 1953.

La Loma—Paid Bill File—January 1, 1954 to

La Loma—Monthly Reports.

La Loma—Laundry.

Madra & Kern County Oil Rights.

Schedule A—(Continued)

39. Oliver Cromwell—General.
 40. Oliver Cromwell—Paid Bill File—July to Dec. 31, 1953.
 41. Oliver Cromwell—Paid Bill File—Jan 1954 to
 42. Oliver Cromwell—Rent Receipts.
 43. Oliver Cromwell—Monthly Reports.
 44. Oliver Cromwell—Laundry.
 45. Nagel-Richman—San Bernadino Acre (includes Orange County Lots and San Cl Lot.)
 46. Western Arms—Rent Receipts.
 47. Western Arms—Smog.
 48. Western Arms—General.
 49. Western Arms—Monthly Reports.
 50. Western Arms—Laundry.
 51. Western Arms—Paid Bill File—Jan 1953 to December 31, 1953.
 52. Western Arms—Paid Bill File—Jan 1954 to
 53. Richman Trust Workpapers—Jan. 31 to Nov. 30, 1953.
 54. Richman Trust Tax Returns for Year 1953.
- General Ledger Book to December 31, 1953
- Current Ledger Book.
- Cash Receipts and Disbursements Book to

Schedule A—(Continued)

Receipts and Disbursements Book from
1, 1954 to

1 Record Book.

Payroll Terminations Book.

The following records of properties of the
Richman Trust and properties formerly be-
longing to Nagel-Richman:

Carton No. 1: containing the following
tabbed filed:

Old Richman Trust—General.

Old Richman Trust—Burbank Corner.

Old Richman Trust—Linden Court.

Old Richman Trust—Ponce de Leon Apart-
ments. [133]

Old Richman Trust—Surflin.

Old Richman Trust—Tremaine Property.

Nagel-Richman—Insurance.

Nagel-Richman—Plate Glass Insurance.

Rent Control Law.

Correspondence re Rent Control.

Rent Control Petitions.

Rent Control.

Nagel-Richman—Atlantic and Compton
Acres and Lewis Lot.

Nagel-Richman—Beanhouse and Bean & Do-
gville.

Nagel-Richman—Bellhurst Park. Bescondy
and La Canada.

Schedule A—(Continued)

Nagel-Richman—Burbank San Jose.

Casa Loma Court.

Casa Loma Rent Statements.

Casa Loma Court—Paid Bills 3/31/4

Casa Loma Court—Paid Bills April

Nagel-Richman—Chowchilla Acres.

Coronet Apartments.

Coronet Telephone & Telegraph Bill

Coronet Laundry Bills.

Coronet Paid Bills — March, 1943 to
ary, 1944.

Nagel-Richman Culver City Lots.

2. Carton No. 2: containing the fo
tabbed files:

Nagel-Richman El Cajon Ranch.

Fletcher Apartments—Legal.

Fletcher Apartments.

Fletcher Apartments.

Fletcher Apartments.

Fletcher Apartments—Rent Statemen

Five (5) Fletcher Apartments Pa

Files from November, 1941 to C
1950.

Nagel-Richman—Imperial Acres.

Nagel-Richman—Inglewood Building

Nagel-Richman—Jackson Farm.

Jackson Farm.

Nagel-Richman—Jones Farm.

Jones Farm.

Schedule A—(Continued)

R-T Melrose Building.

Modern Machine Works.

Carton No. 3: containing the following
tabbed files:

Ojai Apartments—Three (3) Paid Bill Files
from September, 1941 to May, 1944.

Ojai Apartments.

Nagel-Richman—Olympic Boulevard Lot.

Nagel-Richman—Paden and Pierson Lots.

Nagel-Richman—Portland Acres.

Nagel-Richman—Powers Place.

Nagel-Richman—Sixty Acres.

Nagel-Richman—Spokane Lots.

T—Stolper Electric Financial Statements.

Nagel-Richman—Long Beach Triangle.

Strand Lot.

Villa Carlotta—OPA.

Villa-Carlotta—Laundry bills.

Villa Carlotta—Telephone Bills.

Villa Carlotta—Monthly Reports.

Nagel-Richman—Villa Carlotta.

Villa Carlotta—Four (4) Paid Bill Files
from Nov. 1944 to Mar., 1948.

Carton No. 4: containing the following
tabbed files:

Western Arms Apartments.

Western Arms—Laundry bills. [135]

Woods vs. Richman.

Schedule A—(Continued)

5. Carton No. 5 — containing the following tabbed files:
Fountain Manor—OPA.
Fountain Manor.
Fountain Manor.
Stanley vs. Richman.
Fountain Manor—Laundry Bills.
Fountain Manor—Telephone.
Fountain Manor Apartment Hotel—G
6. Carton No. 6 — containing the following tabbed files:
Fountain Manor Paid Bill Files from January, 1944 to July, 1953.
7. Carton No. 7 — containing the following tabbed files:
Canterbury Apartment Hotel Paid Bill Files from October, 1948 to December, 1952.
8. Carton No. 8 — containing the following tabbed files:
Oliver Cromwell Paid Bills Files from August, 1950 to June 30, 1953.
La Loma Paid Bill Files from May, 1953 to June 30, 1953.
9. Carton No. 9—containing the following:
Check Stubs from January 1, 1946 to September 30, 1953.
10. Carton No. 10—containing the following:
Richman Trust Cancelled Checks and

Schedule A—(Continued)

Carton No. 11—containing the following:

Richman Trust Cancelled Checks—January, 1951 to October, 1953, including Bank Statements.

Transfer Ledger containing Cash Receipts and Disbursements from January, 1941 to December, 1952.

Transfer Ledger containing old General Ledger Account sheets. [136]

Two Stationery Boxes containing Individual Wage Earner Records, and post-office returned W-2 Forms.

Two Stationery Boxes containing Time Sheets for calendar year 1952 and for January, 1953, through December, 1953.

Oliver Cromwell Payment Book, and Pacific Mortgage Company Statements for 1951 and 1952. [137]

831,823

							(\$63.44)		
\$9,457.73	\$8,021.02	\$2,677.95	\$7,728.29	\$4,931.00	\$61.11	\$32,813.66		\$32,813.66	
8,307.31	6,454.42	2,642.25	7,604.70	4,185.94	321.35	29,515.97		29,515.97	
\$27,035.01	\$21,628.57	\$8,030.70	\$22,989.27	\$14,092.69	\$377.35	\$94,153.59		\$100,143.88	

the month of February include those only for twenty five days.

	(5.30)	(3.80)	(.92)	(16.35)	(0.45)	
d)	\$2,008.99	\$1,971.33	\$712.67	\$1,420.12	\$857.62	
	\$2,003.69	\$1,967.53	\$711.75	\$1,403.77	\$857.17	\$6,943.91
		\$ 95.00	\$171.57	\$ 71.89		\$375.00
ng,	(250.96)	(239.49)	(62.49)	(247.48)		
	(5.90)	(1.45)	(68.14)	(126.69)		\$500.25
e	2,781.00	2,437.08	697.57	2,450.23	1,795.44	(95.67) 2,027.25
ereto)						
	4,814.06	4,156.72	1,411.00	4,627.93	2,851.19	33.44
	\$7,338.20	\$6,447.93	\$2,149.51	\$6,902.57	\$4,519.94	\$780.17 \$2,560.94 \$30,699.26

Repair & Replace.

961.40 572.53 185.87

203.00

al Expenses

Electric & Power	\$725.72	\$ 130.59	\$213.26	\$ 30.07	\$206.16	\$145.64
	340.55	49.07	152.94	59.11	26.92	52.51
1	321.82	79.58		73.55	168.69	
r Maintenance	72.03	12.50	5.00	20.42	16.95	17.16
-Oil Burner	289.35	29.85		250.00	9.50	
Main. & Repair	63.44	5.00	8.00	36.48	8.96	5.00
	962.99	273.99	242.04	67.62	241.42	137.92
& Blank.Cleaners	53.97	35.27	9.63	9.07		
ne & Telegraph	572.70	256.28	185.11	8.94	113.54	8.83
Union	27.29	9.15	6.14		12.00	
s	368.86	97.25	112.37	23.62	118.01	17.61
Expenses						
able Exp.for Guests	206.11	153.86			52.25	
ontrol Service	26.00		7.50	4.50	7.50	6.50
s	14.59	14.59				
sing	93.95		47.69			46.26
ery & Supplies	12.50		12.50			
g, Repair & "eplace.						
ng	961.40	572.53	185.87			203.00

ical	9.42	3.78			\$ 5.64
g & Stoves	123.15	27.84	58.53	6.36	30.42
& Bedding	377.58	26.39	335.08		16.11
& Ven. Blinds	103.97	44.21	59.76		
ng	550.16	135.85	149.25	234.39	
ng	137.04	33.41	5.58	45.78	52.27
ure Repair	21.58			16.68	4.90
tering	461.78		135.30	78.94	134.79
					112.75
discounts	\$6,970.73	\$2,008.99	\$1,971.33	\$712.67	\$1,420.12
	26.82	5.30	3.80	.92	16.35
AS PER SCHEDULE B	\$6,943.91	\$2,003.69	\$1,967.53	\$711.75	\$1,403.77
					\$857.62
					.42
					\$857.17

al Expenses

		<u>Menor</u>	<u>Loma</u>	<u>Cronwell</u>	<u>Arms</u>
Electric & P.	\$ 477.71	\$ 114.42	\$ 106.96	\$ 62.99	\$ 73.03
1	253.61	32.71	46.72	107.67	59.94
	402.79	162.66	--	89.11	71.44
r Maintenance	121.60	18.55	36.29	32.03	28.73
-Oil Burner	10.50			5.50	5.00
Main.& Repair	91.72	21.25	28.35	5.00	32.97
-Curtail & Blan.	103.37	49.29	37.77	6.53	
ne & Telegraph	263.04	49.55	57.77	148.33	5.89
Union	14.03	6.67	1.89	5.47	
s	246.29	54.79	36.92	37.94	116.64
ash Expend.	498.79	215.37	87.97	68.14	92.75
					\$22.99
<u>expenses</u>					
able Ex.-Guests	71.48	30.68		40.80	
ontrol Service	26.00		7.50	7.50	6.50
r	65.00		45.00	20.00	
upplies	24.06		24.06		
& Wages	6,212.51	1,640.25	1,554.36	1,610.28	637.62
Bonus	515.00	155.00	75.00	145.00	80.00
					450.00
					25.00

Security	(P100.97)	(P250.96)	(P239.49)	(P62.49)	(P224.65)	(P124.37)	(P 95.67)
ax Withheld	(64.06)						
s' Rent	(315.00)						
ive Expense							
's Bond	375.00						375.00
ry	2.85						2.85
Repairs & Rep.							
g	115.74					115.74	
al	38.98		38.98				
& Stoves	177.21	155.97	2.50	9.75	6.49	2.50	
Ven.Blinds	52.12		30.07			22.05	
	68.88		50.79			18.09	
	759.50		170.00	174.00	7.50	408.00	
	215.42	73.84	16.87	18.29	87.87	18.55	
ngs	76.31		76.31				
	12.65				12.65		
d to Guest	3.75				3.75		
t- Interest	638.16						
Principal	1,389.09						

Revenue	\$ 500.25						\$ 500.25
Ints	20.93	\$ 5.90	\$ 1.45				
Taxes	\$12,804.85	\$2,524.14	\$2,291.14	\$738.51	\$2,274.64	\$1,668.75	\$780.17
10/53	17,894.41	4,814.06	4,156.79	1,411.00	4,627.93	2,851.19	33.4
BER, 1953,							
TS AS PER	\$30,699.26	\$7,338.20	\$6,447.93	\$2,149.51	\$6,902.57	\$4,519.94	\$780.17
							\$2,560.9

	450.00				\$450.00	
Dress	224.71	\$24.06	48.85	61.00	72.95	\$17.85
Shoes	432.04	206.54	112.75			112.75
Life Insurance					1,835.46	
Ins. Prem.	11.00		10.00	1.00		\$3,427.66
Comp. Deposit						400.00
Bank-Interest						632.99
Principal						1,394.33
Rent Expense-						120.33
Internal Rev.						
Unemploy.						212.55
F.O.A.B.						744.55
Total or Employ.						657.22
	\$21,377.96	2,695.80	\$3,300.28	\$871.08	\$4,888.57	\$1,592.70
	2.33	.62	.61			1.10
Disburse.						
Schedule B	\$21,375.63	\$2,695.80	\$3,299.66	\$870.47	\$4,888.57	\$1,591.60
Petty cash						\$439.886 \$7,589.66

Total Expenses

Electric & P.	\$1,261.18	\$ 260.43	\$315.61	\$159.64	\$305.64	\$219.86
	646.98	89.39	207.45	63.47	152.02	134.65
ary	1,200.35	335.78	306.14	87.87	293.82	176.74
& Tel.	865.86	288.31	294.93	12.71	260.14	9.77
y Cash	454.26	136.37	141.34	10.08	50.60	157.04
						\$58.85*
<u>Expense</u>						
ener	65.00		45.00		20.00	
g & Wages	5,754.87	1,564.50	1,352.05	320.00	1535.26	533.06
al Security	(115.16)					450.00
i.	(57.65)					
me T. Withheld	(379.45)	(209.58)	(206.68)	(53.62)	(200.10)	(104.78)
pyees' rent	(307.00)					(84.50)
Stationery						15.55
ing, Repairs & Repl.						
etting	9.00		9.00			
ing	760.00		425.00	80.00		255.00
ing	--					
erical	11.33			11.33		
ing & Stoves	116.96		30.68	30.60		55.68
arier	150.40		12.54		112.78	25.08

Personal Expenses

Electric & Power	\$1,020.97	\$ 239.68	\$ 294.97	\$270.30	\$216.02
Oil	265.51		204.42	\$ 61.09	
Motor Maintenance	577.10	177.51		73.55	73.55
Generation	71.59	30.79	5.00	11.85	6.00
Telephone	101.54	5.00	61.50	4.00	25.98
Postage	1,156.43	329.46	305.29	88.44	166.93
Laundry & Blank.Clean.	37.60	7.32	2.30	3.51	5.63
Telephone & Telegraph	20.84		4.03	11.35	5.46
Harmon Union	22.81	19.70	3.11		
Entertainment	299.51	86.13	48.48		72.58
Cash Expenses	406.17	91.18	95.73	18.61	65.08
<u>Expenses</u>					\$ 41.80
Amusement	188.43	135.33		53.10	
Control Service	26.00		7.50	4.50	6.50
Insurance	65.00		45.00	20.00	
Other	41.23				34.41
Travelling	189.50	52.00	45.50	16.50	29.50
Advertising	33.72		33.72		

[illegible]

DISBURSEMENTS MADE BY THE RECEIVER AS DIRECTED BY THE COURT

COVERING LIABILITIES INCURRED PRIOR TO FEBRUARY 28, 1954,

BUT NOT PAID UNTIL AFTER THAT DATE.

<u>SS</u>	<u>Total</u>	<u>CA</u>	<u>FM</u>	<u>LL</u>	<u>OC</u>	<u>WA</u>
y Co.	\$58.18		\$58.18			
co, LAA.19						
	2.59				\$2.59	
ly Blvd., L.A.26						
	93.72	\$93.72				
mel Rd., L.A. 48						
Puritas Waters	14.07	14.07				
shington Blvd., L.A.						
	773.27	-	309.38	180.29	211.15	\$72.45
eroa						
geration Co.	78.26	5.00	8.50	31.42	5.00	28.34
se Ave., L.A. 38						
dry	1,023.44	298.36	260.56	66.69	244.97	152.86
Monica, L.A.						
& Blank. Cleaners	75.60	18.22	28.49	9.69	13.18	6.02
estern Ave., L.A.						
& Venetian Blind	7.74		7.74			
onta Monica Blvd., LA						
et Control Co.	26.00	--	7.50	4.50	7.50	6.50
argil, L. A. 4						
ining & Oil Co.	316.83	89.11	--	70.72	78.50	78.50
th, L.A. 58						

, painter	\$75.00	\$75.00		
Western, L.A. 6				
Oil Burner	10.00	\$10.00		
Western, L.A. 6				
Electric	10.98		\$10.98	
roadway, L.A. 12				
any	16.33			\$16.33
3rd, L.A. 48				
Electric Co.	10.94	10.94		
7th, L.A. 17				
Soap Co.	28.66		\$28.66	
1st, L.A. 54				
Times	11.76	11.76		
1st, L.A.				
Robert	24.54			24.54
Mariposa				
A. F.	11.00		11.00	
ormandie				
Sales Co.	15.50		11.50	4.00
3rd, L.A. 48 - Dis. <u>.31</u>	15.19			
refrigeration	503.98	4.00		499.98
rly Blvd.				
lean. & Dyers	52.89	9.77		43.12
3rd, L.A. 5				
pholstering Co.	338.25	112.75	112.75	112.75

umbing	\$192.16	\$26.39	\$88.63	\$69.07	\$8.07	--
ion, L.A. - Disc. <u>19.21</u>	\$172.95					
bly Co.	24.30		24.30			
ly Blvd. -Disc. <u>.49</u>	23.81					
e Method, Inc.	43.56		36.46			7.10
a Monica Blvd.-Disc. <u>.87</u>	42.69					
th J.	38.70		38.70			
resta Court, L.A.						
lstering Co.	10.15		10.15			
et Blvd.						
Specialty Co.	146.20	18.43	36.18	16.24	28.80	46.55
estern -Disc. <u>2.92</u>	143.28					
on	15.62	3.05	4.54		8.03	
lower, L.A. 17						
pe. & Office Equip.	6.13					
estern						
t'l Bank-Fed. Deposit. Rec.	562.63					
ual Insurance, L.A.	31.83			31.83		
sen- office	103.18					
ter & Power, 207 So. B'way	141.61			141.61		
ephone & Tel. Co.	865.66	331.26	265.57	--	260.95	7.8
live, L. A.						
Gas Co.	321.78	84.68			124.30	112.8
lower, L. A.						
TOTAL	<u>\$6,121.40</u>					

RECAPITULATION: Balance in bank as of February 28, 1954: \$26,819.11

Payments as listed above..... 6,121.40

Balance as of March 10, 1954..... \$20,697.71

WITH NAMES, ADDRESSES, AND AMOUNTS OF CLAIMS, INCLUDING
BOTH SPECIFIC AND CONTINGENT CLAIMS, AS OF MARCH 10, 1954

<u>ss</u>	<u>Nature of Claim</u>	<u>Amount</u>
Control, Inc.	Catalytic unit at Canterbury and	\$1,329.40
Brea, Los Angeles	" at Oliver Cromwell	1,329.40
eration Main. Co.	For dissatisfactory work at	61.10
se Ave., L. A. 38	Western Arms	
Times	Advertising, March 1 to March 5	4.68
st, L. A.	for Fountain Manor	
Tax Collector	2nd installment taxes due April 10	14,858.31
stice, L. A. 12	on the five buildings	
s:		
g tax		262.55
ax- Employees		125.96
ployment Insurance-Employer		332.71
it Life Insurance Co.	Oliver Cromwell Trust Deed	
c Mortgage Corp.	Payable \$2,027.25 monthly -Balance-	165,993.71
th, Los Angeles		
Richman	Management Fee for Nov., 1953 in amount claimed	
Hill, Los Angeles	by F. I. Richman to be 10% of \$31,043.33...	3,104.33
iver and his Attorneys	in amounts to be fixed by the Court.	
phone & Telegraph Co.	House bills from following dates: Canterbury-2/6/54;	
Olive, Los Angeles	Fountain Manor- 2/11/54; and Oliver Cromwell-2/21/54,	
	and Managers' telephone bills.	
f Water & Power	Bills from: Canterbury-2/12/54; Fountain Manor-2/10/54;	
Broadway, L. A.	La Loma-2/25/54; Oliver Cromwell, 2/5/54; and W.Arms-2/10/54	
if. Gas Co.	Bills from: Canterbury-2/12/54; Fountain Manor-2/5/54;	

<u>Name</u>	<u>Nature of Claim</u>	<u>Amount</u>
Sons	For undelivered dining ordered	91.32
Chant, Los Angeles	for the Mountain Manor	
Telephone & Telegraph Co.	Listing of the Canterbury, Mountain	1.75
Olivo, Los Angeles	Manor, and Oliver Brownwell Mt. Hotels	monthly
	in the classified section of the	
	telephone directory to come out in	
	August, 1954	
	For Mountain Manor linen ordered	
Guerra	but not delivered in February	

Disclosed: Filed March 18, 1954.

of District Court and Cause.]

CE OF HEARING ON (1) FIRST AND
NAL REPORT OF RECEIVER, (2)
ETITION FOR ALLOWANCE OF FEE
O RECEIVER, AND (3) PETITION FOR
ALLOWANCE OF FEES TO ATTORNEYS
OR RECEIVER

aintiff Lyda Tidwell and Messrs. Martin,
ahn & Camusi, her Attorneys of Record, and
Defendant Frederick I. Richman and Joseph
Enright, Esq., and Messrs. Brady, Nossa-
an & Paulston, his Attorneys of Record, and
all known creditors of the former Richman
ust as of the close of business on March 10,
54.

ce Is Hereby Given that the following mat-
ill come on for hearing on Monday, April
4, at the hour of 10:00 o'clock a.m., or as soon
fter as counsel may be heard, before Honor-
rnest A. Tolin, Judge of the above entitled
in Court Room No. 6 in the United States
House and Post Office Building, Los Angeles,
rnia, to wit:

First and final report of Roy E. Hallberg, as
er of all the real and personal property con-
ng the former Richman Trust, [157] said
. Hallberg being hereinafter referred to as
receiver."

and reasonable for the services necessarily rendered by him as Receiver during the period commencing December 1, 1953, to and including February 1954.

3. Petition for allowance of fees to FitzPatrick & Whyte and John Whyte, as attorneys for Receiver, in the sum of \$3,000 for ordinary services necessarily performed by them during period commencing November 30, 1953, to and including March 17, 1954, and in such further amount as said Court may find to be just and reasonable for extraordinary legal services necessarily performed by them during the same period.

Dated: March 24, 1954.

FITZPATRICK & WHYTE,
JOHN WHYTE,
/s/ By JOHN WHYTE,
Attorneys for the Receiver

Affidavit of Service by Mail attached.

[Endorsed]: Filed March 24, 1954.

DEFENDANT'S EXHIBIT B

[Title of District Court and Cause.]

DISMISSAL WITH PREJUDICE

Comes now the plaintiff individually and as trustee and as beneficiary under Richman Trust

l this 3rd day of March, 1954.

/s/ LYDA TIDWELL

MARTIN, HAHN & CAMUSI,

By LAURENCE B. MARTIN,

Attorneys for Plaintiff

so ordered except that jurisdiction is re-
over all monies, credits and assets in pos-
or under control of Roy E. Hallberg, re-
heretofore appointed herein, and over said
e and to fix his compensation and allow his
es including fee for his attorney.

h 22, 1954.

/s/ ERNEST A. TOLIN,

Judge

[161]

orsed]: Filed and entered March 25, 1954.

of District Court and Cause.]

CTIONS AND ANSWER TO REPORT
ND PETITIONS OF RECEIVER AND
S ATTORNEY FOR FEES

es Now defendant, Frederick I. Richman,
nself and other interested parties, and in
to the Report and Petition of the Receiver,
Hallberg, dated March 18, 1954, alleges:

of the five managers managing the apartment houses and gave directions to the Union Bank Trust Company where the funds of the Richman Trust were deposited, commencing November 1953, instead of December 2, 1953, as alleged.

2. Answering that portion of paragraph 4, 3, line 16, alleges that the Receiver has failed to retain possession and control of \$785, or more, which was under his control and dominion, in the form of petty cash in the possession of the managers of the five apartment houses, and that the Receiver has permitted this money to be surrendered to the plaintiff, Lyda Tidwell.

3. Answering the allegations of paragraph 5, commencing page 3, line 17 to page 8, line 6, admits that the Receiver, usually through others designated as his agents, most, if not all of whom have been compensated for services out of the assets of the estate; did direct the Union Bank to transfer the Richman Trust funds to him; did employ Harrison, who had for many months kept the books of Richman Trust; did collect the rents from the five apartment house managers, which five apartment house managers had for many months collected the rents; did deliver supplies on some occasions to some of the apartments; did continue the policy of insurance, pay County taxes and maintain files. Upon information and belief, defendant contends that the Receiver did inspect the apartment houses on more than two occasions; alleges he did not have any agents exercising in their discretion, commencing

ms Apartments, and place Christmas trees
apartment houses; did, through his counsel,
the Court to pay a customary and usual
bonus theretofore paid by the Richman
did terminate fire insurance policies and a
n of many years duration established by
n Trust with the approval of all interested
of Richman Trust, and place in effect mu-
insurance issued by Liberty Mutual Insurance
y, which may for a particular year result
scount of 10%, but your answering party
med and believes, and upon information and
alleges it would result in a greater cost paid
considered; did, through agents, change the
count from Union Bank to a bank at Third
estern Avenues; did attempt to revise with-
completion an accounting system; did, in De-
review an Order of the Los Angeles County
llution Authority, being a duly constituted
ment agency, and a contract approved by
uthority made by your answering defendant
ir Pollution Control, Inc., and did, in De-
direct his agent to direct the Air Pollution
, Inc., not to perform the contract, resulting
Order of the Government Authority not
performed, and as a direct and proximate
equence of the act of the Receiver, a criminal
eanor complaint was issued by the Clerk of
unicipal Court of the City of Los Angeles,

defendant is informed and believes, and upon information and belief, alleges that the Receiver through agents, supervise some repainting of lobby of the La Loma, accompany appraiser the plaintiff, obtain bids on painting, examine apartments, confer with upholsterers, select linen, distribute payroll checks, purchase supplies, confer with Air Pollution Control's district officers and the criminal complaint citation had been issued, confer with the Building Department of the City of Los Angeles, confer with the Director of Internal Revenue, prepare a claim for workmen's compensation for a manager of the Oliver Cromwell Apartments, fail to be available to render services and thereafter fail to supervise repair of the refrigeration unit at the Western Arms Apartments, fail to appear and testify in support of his petition for authority to renovate individual apartments. Your answering defendant is informed and believes, and upon information and belief, states that the Receiver's testimony was at least very inaccurate and not untrue, as to the number of vacancies and the reasons given for the tenants having then recently vacated certain of the apartments; that he did confer with one or more of the attorneys for the plaintiff as to the method of capitalizing expenses and other matters, but at all times failed and neglected to confer with your answering defendant, although directed by the Court to do so; that he did confer with his attorney in an effort to submit a response required by the rules of this Court, but

an Order of this Court extending his time which to file the report.

answering paragraph 6, page 8, line 6, your defendant can not at this time admit or the accuracy of schedules B and C of the for the reason that it will require additional time to audit the incomplete records, files and receipts kept and maintained by the Receiver. Based upon the examination of the records of the Receiver at this time, defendant alleges, upon information and belief, that page 1 of the schedule for Western Arms amount shown as \$4,975.75, is in error in that the amount should be \$4,707.40. As to schedule B, Canterbury receipts [165] for 1953 as \$8,307.31 should be \$9,059.59. Western Arms amount in the sum of \$4,185.94 is erroneous. As to schedule B, page 3, the details shown under the column of Disbursements for December, 1953, Operating Expenses, Maintenance, and Renovation Expense (see Exhibit hereto)" is inaccurate, incomplete and incorrect, at least as of this time of audit. Schedule B, page 4, reflects the sum of \$1,789.29 as being Operating Expense, to which amount should be added the Receiver's contribution, plus \$95.67, \$84.50 and \$100.00 or more, for social security and unemployment insurance when ascertaining presently known expenses of the Receiver, which expenses are normally borne by and paid by apartment house proprietors and managers when receiving compensation of ap-

\$29.43 and \$29.40 and possibly others, and answering defendant is informed and believes, upon information and belief, states that there are no records available to show the reason for the payments. That your answering defendant is informed and believes, and upon information and belief, alleges that the Receiver represented to this Court, before his appointment, that he had for some years engaged in the management of property similar to the property of the Richman Trust, that his main [167] vocation for some years was in the management of such property, including management under Court Receivership. That defendant is informed and believes, and upon information and belief, alleges that the Receiver did not had such experience; that the Receiver, in fact, had little, if any, knowhow in the management of similar property, or in the rendition of executive and administrative services. Defendant is further informed and believes, and upon information and belief, states that the Receiver misrepresented to this Court his business experience, his educational qualifications, and the amount of time he had available to administer the assets of the Richman Trust.

7. Answering the Petition of Fitzpatrick and John Whyte, dated March 18, 1954, praying for an order allowing them \$3,000.00 as ordinary attorney fees, and that this Court award an additional amount as and for extraordinary fees, alleges:

Legal Services, L.P.A. 100
d 91 hours in rendering legal services to the
r, and further alleges that a rate of com-
on in excess of \$30.00 per hour, is excessive
reasonable;

that the attorneys for the Receiver were not
d to render any extraordinary services and,
the services rendered consisted of ordinary
tion upon the duties of a Receiver in quali-
s a Receiver, attempting to prepare a report,
ired by the Court rules, dictating and caus-
e typed a Petition for authority to renovate
ents, and the preparation of theirs and the
r's Petition for their fees, except a problem
ng to the compliance with a Los Angeles
lution Control District Order, and contracts
d by it to be performed. Concerning the ren-
of these services, defendant is informed and
and upon information and belief alleges
that the attorneys either failed to research
as to the duties of Federal Receivers to
with orders of local authorities, or without
research erroneously informed the Receiver
need not comply with the Pollution Dis-
Order. That said attorneys are not entitled
pensation for extraordinary services ren-
an effort to obtain a dismissal of the crim-
mplaint filed against one of the Receiver's
a manager, and your answering defendant,
the circumstances.

Orders of this Court and should be surcharged the following amounts of money:

A. On February 26, 1954, this Court made an Order directing the Receiver to surrender possession of the apartment house properties on or before March 1, 1954, and to retain in his possession the monies then collected and under his control and dominion and the monies on deposit in the account opened and maintained by the Receiver. That the Receiver failed and neglected to collect the monies received by some, if not all, of the managers of the five apartment houses during the period February 26, 27 and 28, 1954. That page 10 of the Receiver's report acknowledges this fact and upon the acknowledgment there made, defendant alleges that the Receiver should be surcharged the sum of \$2,000.00.

B. That the Receiver's report, schedule B, page 4, acknowledges that as of February 28, 1954, there were petty cash funds in the amount of \$785.00. That your answering defendant is informed and believes, and upon information and belief, alleges that the Receiver permitted this sum of money to remain in the possession of the managers of the five apartment houses and that this sum of money is not in the possession of or under the control of the plaintiff, Lyda Tidwell. That the Receiver should be surcharged with this sum of money, to wit, \$785.00.

C. That your answering defendant is informed and believes, and upon information and belief, alleges that the Receiver should be surcharged

dated February 26, 1954, above alleged, and earlier than February 27, 1954, the Receiver did not check in the sum of \$2,027.25, being for payment of interest and a principal installment trust deed note secured by the Oliver Cromwell Apartments, which note was not due or payable until March 1, 1954, and which payment was made by the Receiver contrary to the provisions and requirements of the Order dated February 26, 1954, and the Stipulation upon which it was based. Therefore the Receiver should be surcharged in the sum of \$2,027.25.

That your answering defendant is informed and believes, and upon information and belief, alleges that other funds were expended by the Receiver contrary to his rights and obligations or in violation of the Orders of this Court. That your answering defendant will, upon audit being made of the accounts of the Receiver, specifically allege the amounts, dates, and parties to whom [170] paid, and is now only informed of the issuance of two checks to one Katherine Cosgrove.

That the Receiver, on or about December 31, 1953, failed to pay to your answering party the sum of \$3,104.33 as and for the services of your answering party in accordance with the terms and provisions of the Richman Trust Agreement dated December 1, 1945, although said Receiver has re-

F. Your answering defendant is informed believes, and upon information and belief, all that it would be difficult, if not impossible, for Honorable Ernest A. Tolin, Judge presiding in above entitled action and Receivership, to impartially try the issue involving the reasonableness of the fees to be paid to the Receiver, Roy E. Hallberg, and his attorneys, Fitzpatrick and W. because of the following circumstances:

(a) The representations made by the Receiver concerning his qualifications, experience and knowledge, were made to the Honorable Ernest A. Tolin and it may require said Honorable Ernest A. Tolin to appear as a witness in a proceeding before

(b) That although the Honorable Ernest A. Tolin was only a casual acquaintance of Roy E. Hallberg, he did duly appoint said Roy E. Hallberg, Receiver in [171] this proceeding, and may, because of having appointed the Receiver, be inclined to advocate, or to a degree defend the conduct or actions of the Receiver.

(c) That the Honorable Ernest A. Tolin, died December 2, 1953, acknowledge that before the receipt of evidence at the trial in the above entitled action and before the rendition of his decision November 30, 1953, that he had obtained information from accountants who asserted improper conduct on the part of your answering defendant in complying with discovery orders issued by the Court. Specifically, at page 48, line 5, for example

That there was at no time any business conducted

on one occasion after your answering de-
had exhausted the discovery process of this
except deposition proceedings, to obtain pos-
or inspection of a file containing correspond-
d between plaintiff and defendant, your an-
defendant did take possession of this file
cause the file to be lodged with this Court
discovering that the plaintiff had control and
n of said file.

That the terms and conditions of the Order
Court, dated February 26, 1954, [172]
t other things, required that the Receiver
n his possession "money in bank and under
trol of said Receiver". That in all other re-
the Receiver was relieved of his then ob-
s, except the duty to collect monies for
o and including 5:00 p.m., February 28, 1954.
ne Receiver was, by virtue of this Court
required to file his accounting in the due
of business and upon his accounting being
and an Order made upon his and his attor-
es, the remainder of the monies in the pos-
of the Receiver were subject to the direc-
f the parties in the above entitled action.
e plaintiff and defendant had, on February
t, entered into an agreement in writing de-
ng their rights to the monies in the posses-
the Receiver. That a true and correct copy
agreement is attached hereto and marked

entitled to receive all monies remaining in the hands of the Receiver, and in the event they can not agree upon their distribution, then each is entitled to apply to a Court of competent jurisdiction to initially and originally determine their respective rights. [173]

Wherefore, your answering defendant prays:

(1) That the Honorable Ernest A. Tolin resign as the presiding Judge of the above entitled Court and assign another Judge of this Court to hear and determine the petitions of the Receiver and his attorneys for fees;

(2) That the petitions and this answer and the answer of any other interested party be set for trial upon the issues created by said pleadings;

(3) That the trial of the issues created by said pleadings be not had until your answering defendant has had an opportunity to avail himself of the discovery processes of this Court to prepare for hearing upon the Receiver's petition for more than \$4,500 fees and the attorneys' petition for more than \$3,000 fees and for such other and further relief as may be just and proper in the premises.

Dated: April 5, 1954.

BRADY, NOSSAMAN & PAULSON
and JOSEPH T. ENRIGHT,

/s/ By JOSEPH T. ENRIGHT,

Attorneys for Defendant

EXHIBIT A
(Defendants' Exhibit H)

[Letterhead of Joseph T. Enright]

ce B. Martin, Esq.

Feb. 19, 1954

Hahn & Camusi,
est 6th St. Suite 701
geles 14, California

: Tidwell vs. Richman

ir:

in receipt of your letter of the 16th instant
h to thank you for the same.

review the matter, the court decision gave
ient what she was offered two and a half
go before suit was filed, namely, a division
trust. The court in the decision avoided any
ion of fraud on the part of Mr. Richman
ur auditing has not produced any fraud.
ore, until such time as the last court has
ed your contention of any fraudulent acts
part of Mr. Richman, you may not expect
cession from Mr. Richman that in any way
tes him with fraud.

intimations that any arrangement Mr. Rich-
ight make that he would not live up to are
preciated. Bear in mind the record in this
full of examples of Mrs. Tidwell changing
nd after agreements have been made, and I
ure you that anything Mr. Richman agrees

actly the precise terms and wording of the release.
I do not think that is at all necessary. Any agreement made contemplates a full release of any and all claims that either Mr. Richman or Mrs. Tidwell have or think they have against the other from the beginning of the world to the present time. If the matter is going to be terminated, it is my desire to have it terminated completely and not by using tricky terminology which might subject it to costly law suits in the future.

I construe the first paragraph on the second page of your letter of February 16th as being a proposition for Mr. Richman to submit a buy or sell proposition. Mr. Richman is not interested in the \$1000.00 figure inasmuch as that was a negotiated figure and you have seen fit to put him in the position of bidding against himself, but now that you have asked for a buy or sell [175] proposition I am authorized to submit the following, and Mrs. Tidwell may buy or sell as she sees fit to terminate these matters. The proposition is as follows:

1. Both parties mutually release each other from any and all claims known or unknown, that either have against the other from the beginning of the world to the present time.

2. Both parties shall bear their own expenses.

3. Mutual dismissals with prejudice will be entered in the law suit.

4. A stipulation shall be entered into that the receiver be relieved as of February 28, 1954.

sume all operating obligations of the Richman Trust from March 1, 1954 on or until the removal of a receiver as might occur under the foregoing.

The receiver shall file his report and after the removal of the receiver and/or provision for all of the receiver's debts and expenses and operating obligations of the Richman Trust to February 28, 1954, any funds remaining shall be divided equally between Mrs. Mary Richman and Mr. Richman.

The Richman Trust shall be terminated and the assets therein and now being controlled by the receiver shall be distributed in equal shares as undivided interests to Mrs. Tidwell and Mr. Richman.

Mrs. Tidwell shall have her election to either purchase or sell Mr. Richman's undivided half interest in the assets of the Richman Trust, or to sell her undivided half interest in the assets of Richman Trust for a cash sum of \$600,000.00, payable on the following terms:

\$100,000.00 cash shall be paid February 26, 1954, by the party buying to the other upon the determination by Mrs. Tidwell as to her determination whether she is buying or selling the undivided interest in the assets in Richman Trust. [176]

\$500,000.00 shall be paid through escrow to the party selling on or before May 1, 1954.

In the event the \$500,000.00 is not paid

Tidwell's election shall be forfeited and all hereinabove enumerated, except the forfeiture of the \$100,000.00 and retention of operating income as provided in 4 hereof, shall be of no force and effect, and the parties shall be in the same position as they now are except for the forfeiture of the \$100,000.00 and retention of operating income.

8. Mrs. Tidwell shall notify Mr. Richman of her election on or before February 25, 1954 and deliver to Mr. Richman on or before February 25, 1954, in writing, her unqualified acceptance of the terms herein stated and her election, and on February 26, 1954, the \$100,000.00 above mentioned shall be paid to the party entitled to receive the same.

9. All parties will execute whatever is necessary to carry out the terms of this arrangement.

10. Each party may do whatever he or she deems necessary to protect his or her legal position up to May 1, 1954.

Very truly yours,

/s/ Joseph T. Enright

JTE:MH

The above is acceptable to me and I agree to be bound by the terms thereof.

/s/ Frederick J. Richman

Letterhead of Martin, Hahn & Camusi]

Federick I. Richman
1414 Hill Street, Suite 926
Los Angeles 13, California
In re: Tidwell vs. Richman

Feb. 25, 1954

Sir:

We desire to acknowledge receipt of the letter of February 19th, 1954, sent to us by Mr. Enright, Attorney, and on which your agreement and approval was duly noted.

We hereby advise you that Mrs. Tidwell has accepted and modified the terms and provisions as set forth in the letter of February 19th, 1954, and that she has agreed to purchase all of your right, title and interest in the assets of the Richman Corporation on the terms, provisions and conditions set forth herein, and for the sum and amount therein specified.

In accordance with said letter of February 19th, 1954, and as evidence of good faith in her acceptance, we are transmitting herewith a Cashier's Check in the sum of \$100,000.00, payable to you. In accordance with the terms of your proposal, Mrs. Tidwell does here and now accept, she has paid the balance as outlined by you. She is prepared to open an escrow so she may complete the transfer of your interest as expeditiously as possible in accordance with the usual custom in such cases, and as buyer, we would prefer to open

proposal in entire good faith, and we are sure
are equally desirous of bringing this entire si
tion to a conclusion as expeditiously as possibl

This letter is addressed to you since that app
to be your desire in the communication of Febru
19th, 1954, and is being delivered to you person
or, in the event you are not at your office, the c
inal will be left at your office. A signed cop
being likewise mailed to you at your office, and
course, a copy thereof is being transmitted to y
attorney, Mr. Joseph T. Enright.

Very truly yours,

Martin, Hahn & Camusi,

/s/ By Laurence B. Martin

LBM:GP

The above acceptance of the proposal of E
erick I. Richman to sell all of his interest in
Richman Trust to me is approved and agreed t
me, and I agree to be bound by the terms of
proposal of February 19th, 1954, and the unq
fied acceptance as contained in the above lett

/s/ Lyda R. Tidwell

P.S.—The Cashier's Check in the amount of \$
000.00 payable to you, is being delivered to you
sonally, or left at your office in the event you
absent therefrom, along with the original of
letter. /s/ L.B.M. [

Duly Verified.

Affidavit of Service by Mail attached

of District Court and Cause.]

OBJECTIONS TO FIRST AND FINAL REPORT OF RECEIVER

Honorable Ernest A. Tolin, Judge of the
above entitled Court:

as Now Plaintiff, Lyda Tidwell, and objects
First and Final Report of the Receiver, for
following reasons:

ough plaintiff does not contest the accuracy
figures listed in said First and Final Report,
after referred to as "Receiver's Report",
if does object to the Receiver's Report inso-
final approval of said report may affect her
to a division of the funds remaining with
ant, Frederick I. Richman, after allowance of
er's and Receiver's attorney's fees:

court order dated February 26, 1954, it was
d, among other things, that:

* the Receiver, Roy E. Hallberg, shall be
l of his active duties of management, con-
l possession of the assets known as the Rich-
rust, as of five o'clock p.m., [181] February
4, and that the said Receiver, Roy E. Hall-
his agents and employees, and all other
servants and employees of the Richman
give over control and possession to Lyda
, plaintiff, of all the assets of the said Rich-

tion of the parties as one of the steps required finally and completely dispose of the within litigation. The agreement for settlement is controlled by an offer letter of defendant, dated February 19, 1954, and by an unqualified acceptance letter of plaintiff, dated February 25, 1954.

The complete offer of defendant, as stated in the offer letter of February 19, 1954, reads as follows:

“* * * The proposition is as follows:

1. Both parties mutually release each other from any and all claims known or unknown, that either party has against the other from the beginning of time to the present time.

2. Both parties shall bear their own expenses.

3. Mutual dismissals with prejudice will be entered in the law suit.

4. A stipulation shall be entered into that the receiver be relieved as of February 28, 1954, and whoever buys shall be entitled to all receipts and shall assume all operating obligations of the Richman Trust from March 1, 1954 on or until the appointment of a receiver as might occur under 7(c) hereof.

5. The receiver shall file his report and after payment and/or provision for all of the receiver's claims and expenses and operating obligations of the Richman Trust to February 28, 1954, any funds remaining shall be divided equally between Mrs. Richman and Mr. Richman.

6. Richman Trust shall be terminated and the property therein [182] and now being controlled

interests to Mrs. Tidwell and Mr. Richman. Mrs. Tidwell shall have her election to either Mr. Richman's undivided half interest in the of Richman Trust, or to sell her undivided f interest in the assets of Richman Trust for n of \$600,000.00, payable on the following

\$100,000.00 cash shall be paid February 26, y the party buying to the other upon the tion by Mrs. Tidwell as to her determination ther she is buying or selling the undivided t of the assets in Richman Trust.

\$500,000.00 shall be paid through escrow to rty selling on or before May 1, 1954.

In the event the \$500,000.00 is not paid h escrow on or before May 1, 1954, then a r may be re-instated to operate the assets hman Trust and the \$100,000.00 paid upon idwell's election shall be forfeited and all ereinabove enumerated, except the forfeiture \$100,000.00 and retention of operating in- s provided in 4 hereof, shall be of no force ffect, and the parties shall be in the same n as they now are except for the forfeiture \$100,000.00 and retention of operating in-

Mrs. Tidwell shall notify Mr. Richman of her n on or before February 25, 1954 and shall to Mr. Richman on or before February 26,

shall be paid to the party entitled to receive same. [183]

9. All parties will execute whatever is necessary to carry out the terms of this arrangement.

10. Each party may do whatever he or she deems necessary to protect his or her legal position prior to May 1, 1954.

Very truly yours,

/s/ Joseph T. Enright

JTE:MH

The above is acceptable to me and I agree to be bound by the terms thereof.

/s/ Frederick I. Richman"

Plaintiff and defendant have performed all that on their part to be performed in connection with their settlement of the case, except as hereinafter appears. Plaintiff now has title to all trust properties and defendant Frederick I. Richman has received the sum of \$600,000.00.

Plaintiff and defendant, Frederick I. Richman, are in disagreement as to the meaning of said agreement resulting from the offer letter of February 1954, and its unqualified acceptance by plaintiff and in further disagreement as to the debits and credits to be made to the fund in the hands of the Receiver. This honorable court cannot dispose of the balance of funds remaining in the hands of the Receiver after making provision for payment

r, until it resolves these questions. The variations in which plaintiff and defendant are in agreement are as follows:

Plaintiff, Lyda Tidwell, was forced to pay real property taxes out of her own funds for the period January 1, 1954 through June 30, 1954, in the sum of \$358.31. Since real property taxes are an ongoing obligation of the trust, and the Receiver has paid said taxes for the months of January and February, 1954, plaintiff claims that she is entitled to reimbursement out of the Receiver's fund the sum of \$4,952.77.

The receiver made his Final Report without payment for water, gas, [184] telephone and electric bills for a portion of the month of February, in the sum of \$1877.50. Plaintiff has now paid these bills and claims reimbursement from the Receiver's fund this amount.

The Receiver has not paid the balances due for catalytic units installed in the Canterbury Apartments in the sum of \$10.00 each, or a total sum of \$2,658.80. These units were contracted prior to February 28, 1954, and plaintiff claims reimbursement from the Receiver's fund in the amount of \$2658.80 for the reason above stated.

The Receiver collected \$4,499.29 worth of February 1954 rents in the preceding month of February. Plaintiff claims reimbursement for these

5. The purchase of defendant's interest in Richman Trust by plaintiff was arranged through an escrow established at the Main Office of California Bank, 629 South Spring Street, Los Angeles, California. In said escrow, plaintiff was charged with the sum of \$577.50 for Internal Revenue Stamps placed on the deed of conveyance from defendant, Frederick I. Richman, to plaintiff. Plaintiff was also charged with defendant seller's estate fees in the sum of \$329.00 in said escrow. These are charges which should be paid by seller, and plaintiff claims the total sum of \$906.50 from defendant personally. The escrow instructions specifically state the following language:

"These instructions are not intended to amend, not amend, alter, modify or supersede any agreement outside of escrow between F. I. Richman and with which agreement California Bank is not to be concerned."

6. There may be other operating expenses of Richman Trust to February 28, 1954, which have not been paid by the Receiver, and plaintiff will leave to amend her objections accordingly should such appear to be the case.

Defendant, Frederick I. Richman, also makes certain claims to the Receiver's fund, as follows:

1. Defendant claims that one of the unperformed operating obligations of the Richman Trust is defendant's agent's fees for the month of November 1953 in the sum of \$2,104.22. If

between plaintiff and defendant is clear. Moneys have been executed, and both parties have any and all claims which they might have against the Trust and against each other. Defendant, Frederick I. Richman, has always "paid" one-half of the agent's fee since he was one of the beneficiaries. Plaintiff, Lyda Tidwell, and defendant, Frederick I. Richman, both also have claims for net income for the months of November and December, but these were lost to them by virtue of the agreement, and the same is true of defendant's claim for agent's fees.

Defendant also claims that the Receiver erroneously made the March payment on the Oliver Bell loan, in the sum of \$2027.27. However, the report of the Receiver does not so indicate.

Defendant also claims that he is entitled to one-half of moneys collected by certain of the property managers over the week-end of February 27th and 28th. However, portions of these moneys were for January and portions were for March rents. A fair and reasonable interpretation of the agreement of the parties would be to pro-rate all rents for the month of February, 1954.

Therefore, plaintiff prays that the First and Final Report of the Receiver be settled and that the court make evidence with respect to an accounting between plaintiff and defendant, Frederick I. Richman, so that the court may be in a position to determine the respective rights of plaintiff and defendant.

made therefrom to the Receiver and his attorney
for services rendered by them.

MARTIN, HAHN & CAMUSI
/s/ By WILLIAM P. CAMUSI,
Attorneys for Plaintiff,
Lyda Tidwell

[Endorsed]: Filed April 7, 1954.

[Title of District Court and Cause.]

PLAINTIFF'S REPLY TO OBJECTIONS
DEFENDANT FREDERICK I. RICHMAN

Comes now Plaintiff, Lyda Tidwell, and in reply to
to Objections of Defendant, Frederick I. Richman, dated
dated April 5, 1954, alleges as follows:

1. The Receiver was not to retain possession
and/or control of, \$785.00 or more in petty cash.
That the order of court dated February 26, 1954,
ordered that the Receiver was only to retain possession
session of money in bank. Furthermore, said petty
cash constituted a part of the assets of the Richman
Trust which were purchased by Plaintiff Tidwell
and which belong to her solely, all in accordance
with the agreement of the parties set forth by the
of the Objections of Plaintiff and Defendant Richman
man herein.

2. Plaintiff denies that it would be difficult
and/or impossible for the Honorable Ernest C. Tolin
Tolin to try the issue involving reasonableness of
expenses incurred by the Receiver.

at this Honorable Court is the only court
has jurisdiction to try the issue of the rea-
ness of the Receiver's fee and the fee of the
y for the Receiver. And further, this Honor-
urt is the only court which has jurisdiction
he issue of Plaintiff's and Defendant Rich-
ights to the fund remaining in the hands of
eiver and the disposal of said fund.

ith respect to other credits to which Defend-
hman claims he is entitled from the Receiver
the fund in the Receiver's possession, plain-
already stated her position in her Objec-
eviously filed, and reference is hereby made
objections as though set forth herein in full.
e Receiver is entitled to a reasonable fee
services and the attorney for the Receiver is
to a reasonable fee for legal services ren-
he Receiver in this matter.

efore, Plaintiff prays that the Final Report
count and Petitions of the Receiver and his
ys be settled after hearing and that this
ake evidence and declare the rights of Plain-
Defendant Richman to funds remaining in
ds of the Receiver, and order disposition of
nd in accordance therewith.

l this 8th day of April, 1954.

MARTIN, HAHN & CAMUSI,

/s/ By WILLIAM P. CAMUSI,

Attorneys for Plaintiff,

PLAINTIFF LYDA TIDWELL'S POINTS AND
AUTHORITIES IN SUPPORT OF HER
OBJECTIONS AND HER REPLY TO
DEFENDANT RICHMAN'S OBJECTIONS

Court has jurisdiction to settle accounts, decide the
rights of Plaintiff and Defendant Richman as to the
fund remaining in Receiver's hands and to make an
order disposition in accordance therewith.

Defendant Richman claims on Page 11 of his
Objections to the Receiver's Report that he and
Plaintiff Lyda Tidwell are entitled to apply to this
Court of competent jurisdiction to initially and
originally determine their respective rights to the
funds remaining in the hands of the Receiver.

This proposition is incorrect. This Court has no
jurisdiction of the fund and jurisdiction to decide who
persons are entitled to distribution of the fund
and in what amounts.

In *Pacific Bank vs. Madera Fruit, Etc. Co.*, 100
Cal. 525, plaintiff dismissed suit after a Receiver
had been appointed and after the receiver had taken
possession of certain assets. Thereafter the receiver
filed his account and petition and asked the court
to "settle the same, fix his compensation, et cetera."
Plaintiff then filed a motion to dismiss the receiver's
account and petition on the ground that the court
had lost jurisdiction. However, the motion was denied
and this ruling was affirmed on appeal.

tain jurisdiction to settle the receiver's account it also retains jurisdiction to dispose of funds in the receiver's possession, saying, the

“is still amendable to the court as its officer has complied with its directions as to the disposal of the funds which he has received during the course of his receivership.”

Pacific Bank case also states, at P. 527,

“If the court below lost jurisdiction of the case by virtue of the dismissal so that it could not settle the accounts of the receiver, nor make any disposition of the funds in his hands, how would the same be settled or the funds disposed of? The money on hand and collected by the receiver is in violation of law in the hands of the court to be disposed of as the law directs.” (Emphasis ours.)

The court in which the receiver was appointed has, after the dismissal of the case, settle and audit the accounts of the receiver, to what jurisdiction will he resort? The dismissal of the case is the end of it as between the parties, but the court still retained the power to settle and audit the accounts of its receiver and to direct the disposition of the funds in his hands.” (P. 527) (Emphasis ours.)

It is clear that the receiver is holding funds for

stated, quoting from Beach on Receivers, sec. 6, ¶ 10, that "Though a receiver may be, and generally is, appointed upon the application of one of the parties interested in the property which he is to preserve, his holding is not merely for the benefit of that party, or of any other party; it is the holding of the court for the equal benefit of all persons interested in the property may be finally adjudged by the court to have no effect in it;"' (Emphasis ours.)

In State vs. Gibson, 21 Ark. 140, the court, after referring to jurisdiction over a receiver after dismissal of the case, said,

"He was an officer of the court and subject to its orders in relation to the partnership effects placed in his hands as receiver until discharged by the court."

To same effect, see Ireland vs. Nichols, 40 Mo. Pr. 85; Whiteside vs. Pendergast, 2 Barb. Ch. 207.

Respectfully submitted,

MARTIN, HAHN & CAMUSI
/s/ By WILLIAM P. CAMUSI,
Attorneys for Plaintiff,
Lyda Tidwell

Affidavit of Service by Mail attached.

[Endorsed]: Filed April 12, 1954.

MINUTES OF THE COURT

April 12, 1954, at Los Angeles, Calif.

nt: Hon. Ernest A. Tolin, District Judge;
Clerk: Wm. A. White; Reporter: Virginia
; Counsel for Plaintiff: Wm. P. Camusi;
for Defendants: Joseph Enright; Counsel
eiver: John G. Whyte.

edings: For hearing on (1) first and final
of Receiver; (2) petition for allowance of
Receiver; and (3) petition for allowance of
attorney for Receiver.

makes a statement that no evidence will be
concerning the appointment of the Receiver
action.

t makes a further statement that if it orders
t on its own motion, the charge will be made
the Receiver, but if one of the litigants
ges the Receiver's report and requests an
he charge for the same will be made against
llenging party.

ney for defendant states he will take the
ons of the Receiver and his attorney, after
he moves the Court to set the matter down
l as to the issues of the payment of fees to
ceiver and his attorney.

Ordered that issues of payment to Receiver

payment of his fees and his attorney's, is set for pretrial hearing May 14, 1954, 10 a.m.

Counsel for both sides to file briefs re divisions of monies on, or before 5 p.m., May 9, 1954.

EDMUND L. SMITH,
Clerk

/s/ By WM. A. WHITE,
Deputy Clerk

[Title of District Court and Cause.]

PETITION TO DISQUALIFY AND REVOKE THE CREDENTIALS OF JUDICIAL AUTHORITIES

To the Honorable Ernest A. Tolin, Judge of the
above entitled court:

The Petition of Frederick I. Richman, defendant herein, respectfully represents that the only remaining issue to be determined by this Court in this case is the accounting and fixation of fees for the services of the receiver and his attorney. That the now pending Petitions by the receiver and his attorney to have their fees fixed. That defendant has filed objections to these Petitions, in which defendant has alleged that the receiver misrepresented his experience, qualifications, and that he had available to act as receiver, which misrepresentations resulted in this Court appointing the receiver. That reference to these allegations are

of the receiver Roy E. Hallberg and his
to make a full and free disclosure of the
pertaining to his experience, qualifications,
ne he had available to act as receiver [195]
apartment houses containing in excess of
artments situate in the City of Los Angeles,
quiring the attention of a person experienced
management and operation of said apart-
houses and the full time of such a person, he
y of unclean hands, and this Court sitting
urt of equity when determining the amount
pensation to be paid said receiver, should
r the evidence upon the question as to
r or not the receiver Roy E. Hallberg is
of unclean hands in making said representa-
nd concealing his lack of time and experi-
That the Honorable Ernest A. Tolin is a
al witness to the determination of what fees
be paid Roy E. Hallberg for his services as
ver, in that Roy E. Hallberg made the fol-
representations to the Honorable Ernest A.
before his appointment as receiver, and at a
hen the Honorable Ernest A. Tolin was in-
ing him to ascertain his availability, experi-
nd qualifications to act as receiver of said
ent houses and any other assets of the Rich-
rust, which Trust assets were the subject
of the above entitled suit.
aid representations being:

operation in Chicago; that he had considerable acquaintance and experience in this type of work;

(b) That his main vocation for some years was in the management of real properties;

(c) That he had experience in connection with Court receiverships;

(d) That he had experience locally (Los Angeles area), in the management of his own real properties;

(e) That he, or his relatives, owned similar properties; [196]

(f) That he maintained a place of business in the Los Angeles area and had, during the past several years, been employed in an executive capacity in various corporations; and

(g) That he then had time and was available to manage and operate the above apartment properties.

2. That the foregoing representations were true in that:

(a) Roy E. Hallberg's sole experience in the management of property consisted of his acting as an agent for a period of approximately one year, about the year 1931, as an agent and employee of the owner of the bonds of a bank situate and conducting its business in Chicago, Illinois, which bank became defective in necessitating the owner of the bonds taking possession of certain real property in Chicago, Illinois. That Roy E. Hallberg's experience in the year 1931 did not qualify him by experience or training to

experience was in the management of a 14 apartment house situate in South Pasadena, California during the period from December 20, 1949, to November 29, 1950, and in the management of an unfurnished flat consisting of 4 units, situate in the City of Pasadena, California, during the period from December 29, 1950, to date, and said Roy E. Hallberg's experience in acquiring and selling two pieces of real property which were occupied by him when owned, in Los Angeles, California, and the acquiring of real property at Corona Del Mar, California. That Roy E. Hallberg had no experience as a real estate representative of elderly and/or wealthy persons, in the management of apartment houses in Southern California, similar to the five apartment houses he undertook to manage and operate as receiver.

That Roy E. Hallberg, the receiver appointed by the Superior Court, knew at the time of his appointment that he would be employed by the County of Orange, California, as an auditor-appraiser, at a salary of approximately \$350.00 per month, and he was required to render services to said County without compensation during the work days of each month thereafter. That, in fact, said Roy E. Hallberg did work for and was an employee of the County of Orange during the period that he was required to actively manage and operate the apartment houses and other assets of the Rich-

and occupation during the period 1933 until March, 1947, was that of a wine salesman headquarters at Brooklyn, New York, and after said Roy E. Hallberg's occupation consisted of an attempt to sell electrical supplies, including Christmas tree lights, the establishing of distributorships for curtain rods, and an attempt to, investing \$18,000.00 as a principal, to manufacture a construction tooth for use upon earth-moving equipment. That said Hallberg's experience in each of these ventures did not relate to or in any manner qualify [198] him to operate in excess of 400 apartments situate in the City of Los Angeles.

3. That your petitioner is informed and believes and upon information and belief states that it may be necessary to call the Honorable Ernest A. [199] as a witness to testify concerning the representations made by Roy E. Hallberg, to establish your petitioner's objections to Roy E. Hallberg's petition to be paid a reasonable fee for his services which petition Roy E. Hallberg alleges that amounts to approximately \$5,000.00 for his services during the period commencing with his appointment about September 2, 1953, to the termination of his duties on February 26, 1954, is a reasonable fee. That your petitioner has no objection to Roy E. Hallberg being awarded a reasonable fee, commensurate with the time he expended, based upon Roy E. Hallberg's earning capacity which has been for three or more years last past approximately \$

in this connection Petitioner is informed and
and upon information and belief states,
by E. Hallberg represented to the Honorable
A. Tolin that he would actively manage said
apartment houses; that Roy E. Hallberg did
actively manage said apartment houses, but did
his duties to Katherine Cosgrove, whom he
(erg) represented to be his secretary and did,
period of time after his appointment, conceal
Katherine Cosgrove was, in fact, Mrs. Roy E.
erg.

Therefore, petitioner prays that the Honorable
A. Tolin disqualify himself to hear and de-
the issues pending upon the fees of Roy E.
erg and his attorney, and to hear and deter-
the accounting of Roy E. Hallberg.

d: April 30, 1954.

BRADY, NOSSAMAN & PAULSTON
and

JOSEPH T. ENRIGHT,

By JOSEPH T. ENRIGHT,

Attorneys for Defendant

[199]

Verified.

Authorities

Any justice or judge of the United States
disqualify himself in any case in which he
s * * * a material witness * * *” 28 USCA

the presiding judge to disqualify himself
28 USCA 455.

Cyc. Fed. Proc. 2nd Ed., Vol. 1, P. 32, Par
and 23.

Affidavit of Service by Mail attached.

[Endorsed]: Filed April 30, 1954.

[Title of District Court and Cause.]

SUPPLEMENTAL PETITION FOR ALLOWANCE
OF FEES TO ATTORNEYS
RECEIVER

To the Honorable Ernest A. Tolin, Judge of
above entitled court:

Comes now Messrs. FitzPatrick & Whyte and
Whyte, as attorneys for Roy E. Hallberg, a
ceiver of all the real and personal property
stituting the former Richman Trust, and for
supplemental petition for allowance of fees for
ditional legal services heretofore necessarily
formed by them both for and on behalf of
Receiver and for and on behalf of themselves
and after March 18, 1954, to and including March
1954, respectfully report and show as follows:

1. Petitioners incorporate herein by reference
and reallege as if herein set forth in full each
every allegation contained in Paragraphs 1

attorneys for Receiver, filed herein on March 4.

Petitioners have necessarily performed additional legal services both for and on behalf of the Trust and for and on behalf of themselves [202] from and after March 18, 1954, to and including March 18, 1954, in connection with the administration of the business and affairs of the former Richman Trust and in connection with the defense of the Trust and his attorneys against the objections raised by defendant Richman on or about April 6, 1954, by defendant Richman to the report and petitions of the Receiver and the attorneys for fees. One of the petitioners, John Whyte, has devoted a total of 28.4 hours of attorneys' time to the performance of said additional legal services as shown on daily time sheets kept by attorneys in the offices of FitzPatrick & Whyte. Of this total of 28.4 hours of attorneys' time, approximately 8.7 hours are allocable to services performed in connection with the administration of the business and affairs of the former Richman Trust, approximately 11.7 hours are allocable to services performed in connection with the defense of the Receiver against the objections raised by defendant Richman to the Receiver's report and petitions for allowance of a fee, and approximately 8.0 hours are allocable to services performed in connection with the defense of the attorneys for the Trust against the objections raised by defendant

which have been necessarily so performed by
tioners is likewise shown on said daily time
and is as follows:

Nature of Legal Services Performed
Date, 1954

March 18: Telephone call from Robert L
insurance broker, re what to do about work
compensation insurance policies—Whyte re
him to Camusi. Proofreading final copy of p
of Receiver's attorneys for fees. Details incid
service and filing of Receiver's report and p
for fee and petition of Receiver's attorneys fo
Letter to Camusi turning over certain pap
him and enclosing check from Brookshire pr
endorsed by Hallberg. [203]

March 24: Details incident to service and
notice of hearing on Receiver's report and p
for fee and petition for fees to his attorneys.

March 25: Telephone call from Air Po
Control, Inc., re installation of equipment in
erators at Oliver Cromwell and Canterbury.
phone call from Enright re form of Rec
report and petition for fee. Letter to Enrig
swering his letter to Whyte, dated March 24,
Letter to Hallberg advising him of time of h
on his report and petition for fee.

April 2: Telephone call from Camusi re his
lems in consummating settlement with Richma
Enright—Camusi inquired what amount th
owner would ask for as a fee.

titions of Receiver and his attorneys. Letter
Hallberg enclosing copy of said objections.

l 8: Telephone call to Mrs. Hallberg re Rich-
objections to Receiver's report and petition
and arranging for meeting with Hallberg
same.

l 10: Conference with Mr. and Mrs. Hallberg
man's objections to Receiver's report and
for fee.

l 12: In court re scheduled hearing on Re-
report and petition for fee and attorneys'
for fees.

l 16: Received letter from Robert Dulley re
ce matters. Letter to Camusi requesting that
care of this matter.

l 19: Telephone call from Robert Dulley re
ation by Receiver of workmen's compensa-
[04] policies on the five apartment houses.

l 21: Conference at Whyte's office between
t and Whyte during which latter exhibited
ner his time slips and correspondence file
action.

l 22: Whyte present at taking of depositions
Hallberg and himself in Enright's office. Con-
s with Mr. and Mrs. Hallberg prior to and
course of depositions.

l 24: Whyte present at continuance of dep-
s of Hallberg and himself in Enright's office.

black memorandum book which was returned to the deposition reporter.

April 30: Telephone call from Camusi inquiring about taking of depositions and discussion of how to handle refund from insurance company amounting to approximately \$4,000.

May 1: Whyte read original of his deposition and corrected his answers wherever necessary - noted corrections on copy of deposition.

May 3: Letter to Hallberg re his deposition conference with Hubert Laugharn of the Los Angeles Bar re his appearance as an expert witness on behalf of FitzPatrick & Whyte as to the reasonable value of their services as the Receiver's attorneys.

May 5: Drafting and dictating supplemental petition for fees to attorneys for Receiver. Conference with Mr. and Mrs. Hallberg re Receiver's demand to Richman's objections to Receiver's report and petition for a fee. [205]

May 6: Drafting, dictating, and revising supplemental petition for allowance of fees to attorneys for Receiver. Telephone call to Mr. Bleacher of Pollution Control, Inc. seeking information regarding history of installation of incinerator equipment at Oliver Cromwell. Delivering pleadings to Hubert Laugharn for his study as an expert witness on reasonable value of services rendered by attorneys for Receiver.

May 7: Efforts to line up expert witnesses on reasonable value of Receiver's services in managing the estate of the late John D. Rockefeller.

on for defending a receiver against charges has performed his duties improperly. Filing of Hallberg and Whyte.

10: Telephone call to Hubert Laugharn re testimony as an expert witness as to reasonable value of our attorneys' fees. Dictating portion of supplemental petition for allowance of fees for Receiver. Telephone call to Jefferson re his employment as an expert witness as to the reasonable value of Hallberg's services. Telephone call to Mrs. Hallberg re continuance of hearing to May 12, and evidence to be presented at hearing.

Petitioners desire to call the Court's attention to the fact that certain of the additional legal services hereinabove referred to are in the nature of extraordinary, rather than ordinary, services. This category would fall the services rendered in connection with defending the Receiver and his attorneys against the objections filed herein by defendant Richman to the report and petitions of the Receiver and his attorneys for fees.

Petitioners allege that the reasonable value of ordinary legal services as in Paragraph 3 set forth, exclusive of the extraordinary services hereinabove mentioned in Paragraph 4, is the sum of \$250.00. Petitioners do not wish to state any figure as representing the reasonable value of the extraordinary services mentioned in Paragraph 4.

tioners for the performance of said extraordinary legal services.

Wherefore, petitioners pray as set forth in original petition for allowance of fees to attorneys for Receiver, filed herein on March 18, 1954, that they pray that the order referred to in prayer of said original petition fix and allow a further sum of \$250.00 as a reasonable attorneys' fee to FitzPatrick & Whyte and John Whyte, attorneys for the Receiver herein, for the extraordinary legal services heretofore necessarily performed by them in connection with the administration of the business and affairs of the former Richman from and after March 18, 1954, to and including May 10, 1954; and that said order include a further sum as this Court may in its discretion determine to be a reasonable attorneys' fee for extraordinary legal services necessarily performed by them in defending the Receiver and his attorneys against the objections filed herein on or about April 6, 1954, by defendant Richman to the order and petitions of the Receiver and his attorneys.

Dated: May 11, 1954.

FITZPATRICK & WHYTE
JOHN WHYTE

/s/ By JOHN WHYTE,
Petitioners.

Duly Verified.

of District Court and Cause.]

MANDAMUS OF POINTS AND AUTHORITIES OF PLAINTIFF, LYDA TIDWELL, REGARDING PRE-TRIAL HEARING ON DISTRIBUTION OF FUNDS REMAINING UNDER CONTROL OF COURT

I.

has jurisdiction to settle accounts, declare rights of plaintiff and defendant Richman to and remaining in Receiver's hands and to order disposition in accordance therewith.

Defendant Richman claims on Page 11 of his Objections to the Receiver's Report that he and Plaintiff Lyda Tidwell are entitled to apply to a Court competent jurisdiction to initially and originally define their respective rights to the funds remaining in the hands of the Receiver.

His proposition is incorrect. This Court has jurisdiction of the fund and jurisdiction to decide what persons are entitled to distribution of the fund, and the amounts.

Pacific Bank vs. Madera Fruit, Etc. Co., 124 Cal. 5, plaintiff dismissed suit after a Receiver was appointed and after the receiver had taken possession of certain assets. Thereafter the receiver filed an account and petition and asked the court to approve the same, fix his [221] compensation, et cetera. Plaintiff then filed a motion to dissolve the

ruled and this ruling was affirmed on appeal. The decision of the court notes that not only do courts retain jurisdiction to settle the receiver's account, but it also retains jurisdiction to dispose of the funds in the receiver's possession, saying, "the receiver,

"* * * is still amendable to the court as its orders until he has complied with its directions as to the disposal of the funds which he has received during the course of his receivership."

The Pacific Bank case also states, at Page 527: "* * * If the court below lost jurisdiction of the case by virtue of the dismissal so that it could not settle the accounts of the receiver, nor make any disposition of the funds in his hands, how could the account be settled or the funds disposed of? The money on hand and collected by the receiver was in contemplation of law in the hands of the court and to be disposed of as the law directs." (Emphasis

And,

"If the court in which the receiver was appointed cannot, after the dismissal of the case, settle the accounts of the receiver, to what jurisdiction will *be* resort? The dismissal of the case was the end of it as between the parties, but we think the court still retained the power to settle the accounts of its receiver and to direct the application of the funds in his hands." (P. 527) (Emphasis

ours.)

It is clear that the receiver is holding funds

perior Court, 88 Cal. 413, 417, the court quoting from Beach on Receivers, sec. 249, though a receiver may be, and generally is, appointed upon the application of one of the parties interested in the property which he is to preserve, holding is not merely for the benefit of such party or of any other party; it is the holding of the court for the equal benefit of all persons who may be legally adjudged by the court to have rights in the property. (Emphasis ours.)

In *State vs. Gibson*, 21 Ark. 140, the court, referring to its jurisdiction over a receiver after dismissal of the case, said,

"The receiver was an officer of the court and subject to its control in relation to the partnership effects placed in his hands as receiver until discharged by the court."

For the same effect, see *Ireland vs. Nichols*, 40 How. 501; *Whiteside vs. Pendergast*, 2 Barb. Ch. 471.

II.

The case between Plaintiff and Defendant, Frederick I. Richman, over funds remaining under the control of court after payment of fees to Receiver and Receiver's attorney.

This Court has been advised, plaintiff purchased all the right, title and interest of defendant in the assets known as the Richman Trust.

the Receiver for approval of his account, provision for the sale of the properties to the tiff and then, subject to certain terms and tions, any moneys remaining in the hands Receiver are to be divided equally. In other if there were no dispute between plaintiff and defendant at this time, the Court would divide between them the funds remaining under the trol of the Court after the deduction thereof fees to be paid to the Receiver and his attorney. However, a dispute has arisen between plaintiff and defendant as to the meaning and interpretation of the written offer made by defendant. Herein will be set out the claims in dispute, and the facts pertaining thereto. [223]

1. Plaintiff was forced to pay out of her funds the real property taxes on the five apartment houses in the Trust for the period January 1 through June 3, 1954, in the amount of \$14,952. Plaintiff claims that taxes for the months of January and February, 1954, should have been paid equally by plaintiff and defendant. The taxes assessed for these two months amount to \$4,952.

The offer of defendant provides in paragraph 4 thereof as follows:

“4. A stipulation shall be entered into that the receiver be relieved as of February 28, 1954, and whoever buys shall be entitled to all receipts and shall assume all operating obligations of the Manhattan Trust from March 1, 1954 on or until the

graph 5 of said offer provides as follows:

The receiver shall file his report and after payment and/or provision for all of the receivings and expenses and operating obligations of the Richman Trust to February 28, 1954, any funds remaining shall be divided equally between Mrs. [redacted] and Mr. Richman."

Reading of paragraphs 4 and 5 above demonstrates without question that Mrs. Tidwell was to pay all obligations beginning March 1, 1954, but not the "operating obligations" of the Richman Trust for the months of January and February, 1954, were to be borne equally by the parties. While there seems to be no question as to the meaning of the above stated paragraphs in defendant's offer, should there be any ambiguity, it must be resolved in favor of defendant since he was the one who made the offer. Mr. Williston on Contracts, Revised Edition, 1938, 1, Section 37, Page 100, states as follows:

* (a) Ambiguous words in an obligation shall be interpreted most strongly against the party who used them."

Again in Volume 3 of Williston, *supra*, Section 1, Page 1788:

"Since one who speaks or writes, can by exacting a more exact expression more exactly prevent mistakes than one with whom [224] he is dealing, doubts arising from ambiguity of language are resolved in favor of the latter;"

It has been held that operating obligations
penses include taxes. See Schmidt vs. Lou
C.&L. Ry. Co., 84 S.W. 314, 315, 119 Ky. 287;
igan Public Utilities Com. vs. Michigan State
phone Co., 200 N.W. 749, 751, 228 Mich.
Fleischer vs. Pelton Steel Co., 198 N.W. 444
183 Wis. 151.

2. Mrs. Tidwell paid from her separate
water, gas, telephone and electric bills for a
tion of February, 1954, in the sum of \$1,8
Since there is no question but that such utilities
are operating obligations, plaintiff contends
this said amount should be equally borne by
parties.

3. Two catalytic units were ordered by defen
Richman during his tenure as agent for the
for two of the apartment houses. These were
stalled during the administration of Mr. Ric
and the receiver. Mr. Richman signed a contract
pay \$1,329.40 for each of the units, or a total
\$2,658.80. These catalytic units were ordered
cause of a dispute with the Air Pollution Control
District, or some such similar agency, and con
tuted an operating obligation of the Trust prior to
March 1, 1954. Here again plaintiff contends
defendant should share equally in this cost.

4. Defendant Richman claims that the Receiver
had collected certain rents between February
and February 28th, 1954 which should have
retained by him so that defendant Richman
share in the same to the extent of one half the

Some of these moneys collected by the Receiver in February, 1954, rents, and some collected in March, 1954, rents. However plaintiff Tidwell contends that \$4,499.29 worth of rents were collected by the Receiver retained by him. Plaintiff Tidwell contends that she is entitled to all of the March, 1954, rents, even those collected in February.

Again an interpretation of paragraphs 4 and 5 of the offer [225] as above quoted should be intended to mean that all obligations existing up to February 28, 1954 and all income for that same period belongs to the parties jointly, but that all obligations from March 1, 1954, must be assumed by plaintiff Tidwell, and it therefore follows that she is likewise entitled to all receipts for March, 1954, and subsequent months.

Pursuant to the written offer of defendant as above referred to and the unqualified acceptance of said offer by the plaintiff Lyda Tidwell the parties entered into an escrow at California and the escrow stated that internal revenue in the amount of \$577.50 and seller's escrow in the amount of \$329.00, or a total of \$906.50, was to be borne by the buyer, Mrs. Tidwell. However the escrow also stated "These instructions are intended to and do not amend, alter, modify or make any agreement outside of escrow between Richman and me (Lyda Tidwell) and with

an involved agreement of purchase and sale then go into escrow and file escrow instructions the escrow instructions are inconsistent with prior written agreement, the question arises which is to control. This is a question of interpretation and the prior agreement and the escrow instructions must be read together. If the escrow instructions specifically state that the prior agreement is the controlling one then, of course, the agreement controls and not the escrow instructions. In *King vs. Stanley*, 32 Cal. (2d) 584, on rehearing 189 Pac. (2d) 46, the court stated that escrow instructions which are mere customary and explicit directions to the escrow company do not take the place of the prior written agreement but merely carry it into effect.

In *Pigg vs. Kelley*, 92 Cal. App. 329, it was held that where a written agreement of sale and escrow instructions connected therewith show by their terms that they refer to the same sale, the two instruments must be construed together under Civil Code 1642 to ascertain the whole contract between the parties.

In *Womble vs. Wilbur*, 3 Cal. App. 527, it was held that where parties entered into a written agreement and in pursuance thereof entered into [226] an escrow whereby certain instructions were given to the escrow company, it is a question of interpretation of contracts and the surrounding circumstances as to whether the former agree-

ree that the previous written agreement is
be superseded by any escrow instructions.
ourse, an interpretation of the written offer
lerick Richman shows without question that
e was selling his interest in the assets of the
n Trust, he naturally is obligated to pay the
seller's fees such as revenue stamps and
escrow fees. There is no reason why the
ant should not therefore pay the said fees
were paid by plaintiff out of her own funds
ow.

efendant Richman claims that the Receiver
not have turned over to the plaintiff the
ash fund of \$785.00 thereby the defendant
seek to obtain one-half of that amount. How-
efendant's offer shows clearly that he was not
five apartment houses but rather all of his
title and interest in and to the assets of the
Richman Trust. There is no doubt that the
ash fund existing in a business or a trust is
et of that business or trust and therefore
idwell is entitled to the full amount of the
ash fund as the purchaser.

efendant Richman also claims that he is en-
o the payment of his agent's fees for the
of November, 1953, in the amount of \$3,-
There is absolutely no merit whatsoever in
attention. It should be borne in mind that the
was terminated by order of court and a judg-
termination of said Trust was entered. The

effect of the judgment was to wipe out the from the beginning as a void trust. In that of the legal proceedings of the above entitled plaintiff had a claim against defendant Richman for excessive fees which the defendant had charged over a period of almost eight years. The defendant had a substantial claim in the approximate amount of \$50,000.00 which, by virtue of the agreement entered into by the parties for settlement, was rendered, and both parties under [227] paragraph 1 of the offer were required to mutually release each other of any and all claims, known or unknown, that they might have against the other from the beginning of the world to the time of entering into the agreement. Since the Trust no longer existed the only claim which Frederick Richman might have against the plaintiff personally was for services rendered her in the administration of her property. This claim he surrendered by executing a release in her favor. It is true that paragraph 2 provides for the "payment and/or provision for" of the receiver's claims and expenses and other obligations of Richman Trust to February 1, 1954, * * *" However, a reading of the contract would demonstrate forcibly that no obligation to defendant Richman was to remain outstanding, and if there be any inconsistencies in the offer, the inconsistencies must be resolved against defendant.

8. Defendant Richman claims that the Receiver

be true that payment should have been made
tiff Tidwell from her own funds and de-
Richman would be entitled to a credit of
that amount. It is respectfully suggested
parties attempt to stipulate as to as many
acts as possible in the pre-trial hearing so
trial itself will be reduced to an argument
rather than a trial of facts coupled with an
nt of law.

etfully submitted,

MARTIN, HAHN & CAMUSI,

By WILLIAM P. CAMUSI,

Attorneys for Plaintiff, Lyda
Tidwell.

[228]

orsed]: Filed June 16, 1954.

f District Court and Cause.]

MINUTES OF THE COURT

June 21, 1954, at Los Angeles, Calif.

nt: Hon. Ernest A. Tolin, District Judge;

Clerk: Wm. A. White; Reporter: Virginia

; Counsel for Plaintiff: Robert Powsner;

for Defendants: Joseph Enright.

eedings: For pretrial hearing re division of
held by Receiver. (In Chambers.)

It is Ordered that counsel file stipulation those items agreed upon and that if stipulation not be reached, Court will hear oral argument

Court will receive stipulation or hear oral argument on July 6, 1954, 10 a.m.

Filed eight exhibits for defendants.

Defts.' Ex. A to H incl. are received into ev.

EDMUND L. SMITH, Clerk,

/s/ By WM. A. WHITE, Deputy Clerk.

[Title of District Court and Cause.]

MEMORANDUM TO COUNSEL RE DISTRIBUTION OF FUNDS REMAINING UNDER CONTROL OF COURT AND ALLOWANCE OF FEES

The problems remaining before the Court are those arising from settlement of the Receiver's and Final Report and Account, the Objectives thereto, the various items to be considered in settlement of the Receiver, and distribution of monies remaining under control of the Court. Several releases have been executed by the plaintiff. Plaintiff's release running to Defendant and certain other persons, and Defendant's release running to Plaintiff. The Richman Trust has not been released and must discharge its obligations. No release has the Receiver been released.

under the Trust indenture. The Court has held that the [230] Trust was procured by undue influence and has allowed Plaintiff to exercise her right of voiding it although it was not void ab initio but voidable only. As it has been voided, Defendant is not entitled to management fees as fixed by the contract by which the Trust was established. Since that contract has been set aside and the contract by which Defendant's fees were determined is void, the life thereof is no longer applicable. He is entitled to compensation from the Trust estate on a quantum meruit basis. The \$3,104.33 asked is based upon a charge of ten per cent of gross income of the Trust during a particular period of time. There was evidence that five per cent was a reasonable property management fee during the time asked for. Other evidence placed the reasonable value of such services somewhat higher. The Court holds that six per cent of the income is a proper quantum meruit allowance under all the circumstances of this case although if the case were one of long term fees for a long rather than a short term, a higher per cent would have been indicated. The Court now finds that the fees for the period in question shall be allowed at the rate of six per cent of gross income of the Trust during the period in question instead of at the rate specified in the contract which has been set aside.

Plaintiff has stipulated in the Escrow Instru-

standing by claiming inferences from an agreement that do not clearly flow from that written agreement. In preparation of the order hereon, court will recognize that it was the obligation of Mrs. Tidwell to pay for the revenue stamps and the escrow fee. [231]

It appears that Plaintiff has paid \$1,877.50 from her own fund in discharge of utility bills for gas and electricity provided to the properties of the former Trust during the time that such properties were being managed by the Receiver. In ordinary course, these bills would have been paid by the Receiver as they were incurred by him. Plaintiff is entitled to recover \$1,877.50 from the funds on hand as reimbursement of this item.

It appears that the various rents collected by Plaintiff because they were rentals which were being paid in advance for occupancy during the term of her ownership of the properties. Even if there been proof of collection by Mrs. Tidwell as her agent of some past due rent originally payable to the Trust or its Receiver, still any such rents would have become payable to her upon the consummation of the agreement because she bought all of the defendant's interest in the assets of that Trust. The Court finds that the agreement memorialized by Joseph T. Enright's letter to Laurence B. Marshall dated February 19, 1954, as adopted in writing by Frederick I. Richman and Laurence B. Marshall in a letter of February 25, 1954, and as adopted in

ets of Richman Trust* * *". If Mrs. Tidwell collected monies which were assets of the Richman Trust, then she has received no more than she purchased. If she has received rents which are not due the Richman Trust, it must follow that these are rents which are due her. She is entitled to have the funds now under control of the Trust divided without charging her for what she received in this regard. [232]

Before the Receiver was appointed, Defendant conducted negotiations for the purchase of certain pollution control equipment referred to as catalytic units for installation in the Canterbury and Cromwell properties. The question is now presented as to who should pay for these units. They were acquired by the Receiver during the course of his receivership but in doing so, he merely carried out a plan which had been put in motion by Plaintiff. These units were assets of the Trust and under the terms of the letter agreement, were sold to Plaintiff. The obligation to pay is the obligation of the Receiver as the Receiver incurred the expense during the administration of his Trust. Plaintiff was not a party to the purchase.

The petty cash fund is an asset of the Richman Trust. Mrs. Tidwell has purchased all of Defendant's interest in that Trust and that includes the petty cash fund which existed simply as an

are common to the day-to-day business transacted by resident apartment house managers.

The Court finds that real property taxes were an operating obligation of the Trust. Whereas Mrs. Tidwell was to assume (and did assume) the operating expenses of the Trust after a tax item of the sum of \$4,952.77 had accrued, even though the due date had not arrived, it is proper that she be reimbursed what she has paid out of her own pocket in payment of an operating expense which had arisen before she acquired her fee simple title. Having assumed by express agreement the operating expenses as of a date after the time period in question. [233]

The March 1st installment upon a note, secured by a deed of trust, which was paid on February 27th, was paid for the benefit of the Plaintiff, although at the time the Receiver paid it, he had no every reason to believe it would be a Receiver's obligation on the due date, and insofar as the Receiver's conduct is concerned, it was not unreasonable to pay a definite obligation three days in advance of its due date, equity will require that it be charged to the person for whose benefit it now appears a payment was made (a circumstance not forced upon the Receiver on February 27th). On that day it appeared that the Receiver would remain in possession. He did not, and on the day the payment fell due Mrs. Tidwell was in charge and the benefit of the payment was hers.

ail what his services consisted of and prays reasonable fees. The Court bears in mind that Plaintiff has testified that ten per cent of the income was a reasonable management fee Defendant rendered the management service. Securing the contract with Plaintiff for that there was an over-reaching and undue influence. Fee was excessive. The Court bears in mind, that there is evidence in the record that various percentages including five per cent and six per cent could be a reasonable management fee. The Defendant in this instance acted as a property manager with the obligations of full trustee and of an agent of the Court. Mr. Richman, with whom he dealt, is a person given to hostile and aggressive attitudes. It is evident that he exercised these relations with the Receiver. The Receiver was obliged to go through the problem of setting up a management plan. [234] He was only allowed to execute the plan for a brief period before Receivership was abruptly terminated. He was taken out of possession hurriedly and he was terminated abruptly. It then became necessary for him to make an accounting, and the accounting procedure was exhausted to its ultimate in searching into the conduct of the Receiver during and even before his Receivership. He spent several days in Court defending the administration of his trust and undergoing a most critical and insulting scrutiny of his

consideration given to the greater than usual
ation which was visited upon him and the
of making up his accounting and explaining
defending it in Court. The Court finds it to
true and correct account.

The Receiver had the services of an attorney
was employed with the approval of the Court
cept for attendance at and participation in
proceedings on the Receiver's account, the se
were of a routine character. The total sum of
ney fees allowed is \$1,000.00, this to include al
nary and extraordinary services for which fees
been prayed. It is noted that the total of Rece
and attorney fees is approximately \$2,500.0
than the fees which would have been enjoy
Defendant while handling a like sum of m
while he was in charge, and he also had a ri
incur legal expenses for which he could be co
sated over and above the fixed percentage. Fu
the Court's Receiver was in charge for a
month period whereas Defendant had adroitly
by over-weaning and deceptive means, obtai
contract for a lifetime. [235]

Counsel for Plaintiff will prepare an order
settlement under Rule 7.

Dated: This 5th day of October, 1954.

/s/ ERNEST A. TOLIN,

United States District Judge.

[Endorsed]: Filed October 5, 1954

of District Court and Cause.]

MEMORANDUM TO COUNSEL

Whereas John Whyte, Attorney for Roy E. Hall-
the Receiver herein, has protested to the
that the award of fees to the Attorney for
Receiver was inadequate, and the Court has
after summoned all parties and counsel before
heard further argument and fully re-considered
the matter of fixing attorney fees for the At-
for the Receiver:

Court does now direct that when the attor-
r plaintiff prepares and submits an order
ettlement of the Receiver's account, that such
shall provide that the fees for John Whyte
orney for Roy E. Hallberg, Receiver herein,
d at the sum of One Thousand Eight [237]
ed Dollars (\$1,800.00), and that the Receiver
nORIZED and directed to issue his check to said
Whyte for that sum.

ed: October 22, 1954.

/s/ ERNEST A. TOLIN,

United States District Judge. [238]

dorsed]: Filed October 22, 1954.

In the United States District Court, Southern
District of California, Central Division

No. 13,742-T

LYDA TIDWELL, et al., Plaintiffs

vs.

FREDERICK I. RICHMAN, etc. et al.,
Defendants

ORDER IN RE SETTLEMENT OF RE-
CEIVER'S ACCOUNT, Fees and Distributio
Funds in Hands of Receiver. (Under
Rules 7 of the U.S. District Court fo
Southern District of California.)

This matter having come on for final hearing on the 27th day of September, 1954, on the First Final Report and Account of the Receiver, Petition for Receiver's Fees and Petition for Receiver's Attorney's Fees and distribution of the balance remaining in the receiver's hands after payment of his fees and those of his attorney, plaintiff appearing by her attorneys, Martin, Hahn & Camusi, defendant Frederick I. Richman appearing by his attorneys, Brady, Nossaman & Paulson and Joseph T. Enright, by Joseph T. Enright, and the receiver Roy E. Hallberg having appeared through his attorney, John Whyte, and oral and documentary evidence having been previously submitted to the court and good cause

I.

Order arises as the result of the final settlement of a suit in this court to cancel an intervivos trust and for other relief, brought by [243] plaintiff, Lyda Tidwell, against defendant, Frederick I. Tidwell, and others, United States District Court No. 13,742-T. After trial of said matter on the issue of fraud and undue influence in the inception of the trust, this court gave judgment in favor of plaintiff and against defendant, and ordered that the trust be cancelled and dissolved, and this court appointed Roy E. Hallberg as receiver on December 1, 1953, to operate and conserve the assets of the trust pending a final determination of the matter by way of final judgment or settlement between the parties. The court approved the employment by the receiver of an attorney, John Whyte, to render legal services to said receiver in connection with the administration of said trust.

II.

On February 26, 1954, pursuant to stipulation of the parties, the court ordered that the receiver be relieved of his active duties of management, control and possession of the trust assets as of 5:00 p.m., Sunday, February 28, 1954, and that the receiver give over control and possession to plaintiff, Lyda Tidwell, of all the assets of the said trust including money in bank and under the control of

had arrived at an agreement for settlement of the entire action. The settlement of the entire action was between plaintiff and defendant Richman arose out of an offer made by defendant Richman to plaintiff by letter dated February 19, 1954, and as a result of said offer, plaintiff purchased all of defendant Richman's right, title and interest in and to the assets of said trust.

III.

Pursuant to stipulation, plaintiff took over the session of the assets of the trust, with the exception of money in bank and under the control of the receiver, at 5:00 o'clock p.m., February 28, 1954, in pursuance of the settlement of the action as previously described, dismissal of the action was entered in court, however, retaining jurisdiction of the matter for the purpose of settling the accounts of the receiver, fixing the fees of the receiver and his attorney, and disposing of any balance of the trust remaining [244] in the hands of the receiver, making provision for the payment of all the receiver's operating expenses and the fees of the receiver and his attorney.

IV.

The first and final report of the receiver and the petition for allowance of fee to receiver, together with the petition for allowance of fees to the attorney of the receiver, were filed. After allowance for receiver's fees and fees for his attorney, plaintiff and defendant are each entitled to one half of the

claims against said funds remaining because of certain charges which the receiver paid, or failed to pay. On or about February 28, 1954, the receiver failed to pay the March installment due on the trust's promissory note secured by a trust deed on the Oliver Ell Apartment house in the sum of \$2,027.27. The receiver did not pay defendant Richman any compensation for services rendered by said defendant as agent for the trust for the month of November, 1953, and defendant Richman has never been compensated for his services.

The receiver, having turned over the assets, books and records of the trust on February 28, 1954, did not pay certain obligations incurred prior to February 28, 1954, during his administration. The receiver failed to pay certain utility bills incurred during the month of February, 1954, in the sum of \$1,300.00. The receiver also failed to pay any of the property taxes on trust assets for the months of January and February, 1954, which taxes amount to a sum of \$4,952.77. The receiver further failed to pay for two catalytic units in the sum of \$1,300.00 or \$2,600.00 for both units, which catalytic units were contracted for by defendant Richman and installed on the apartment houses during the receiver's administration. Plaintiff was not a party to the purchase of the catalytic units. Plaintiff paid for utilities, taxes, and for the catalytic units from her own funds.

and [245] decreed that the said report as filed by the receiver is a true and correct account and that the court finds that the receiver has in his possession a balance of \$20,697.71, consisting entirely of the assets of the trust and said account and report is approved, and the same is confirmed and settled as rendered; that said receiver, Roy E. Hallberg, is hereby discharged from further duties and responsibilities as receiver herein and his services are hereby exonerated; the reasonable value of the services of Roy E. Hallberg as receiver is the sum of \$6,000.00, which the Court finds to be the reasonable value of the said services, and his fees are hereby fixed at the sum of \$6,000.00; the reasonable value of the services of John Whyte, as attorney for the receiver in this matter, is the sum of \$1,800.00, and his fees are hereby fixed at the sum of \$1,800.00, which the Court finds to be the reasonable value thereof.

There remains on hand after allowance for payment of receiver's fees and the fees of his attorney the sum of \$12,897.71 which sum is payable to the plaintiff and defendant Richman as their interest may appear.

It is further ordered, adjudged and decreed that from the balance of funds remaining in the hands of the receiver in the sum of \$12,897.71, defendant Richman is entitled to the following credits: A reasonable fee for services rendered by him as receiver for the dissolved trust, which fee is fixed at six percent (6%) of the gross revenues for the month

igation of plaintiff; and defendant Richman
led to a credit of one-half of said mortgage
nt made for the month of March, 1954, said
f amounting to \$1,013.64, or a sum total of
of \$1,944.94.

further ordered, adjudged and decreed that
the balance of the funds remaining in the
of the receiver in the sum of \$12,897.71,
ff, Lyda Tidwell, is entitled to the following
: One-half of the said utility bills paid by
id one-half amounting to \$938.75; one-half
said taxes paid by her, said one-half amount-
\$2,476.38; one-half of the cost of the catalytic
paid by her, said one-half amounting to \$1,-
or a sum total of credits of \$4,715.13. [246]

further ordered that the receiver reimburse
f from the monies in his possession to the
of \$89.20, paid out by him for copies of the
ions used on the hearing herein.

further ordered, adjudged and decreed that
ance of said fund remaining, in the amount
37.64, after allowance for receiver's fees, at-
s' fees and said credits to both plaintiff and
ant Richman, be divided equally between
ff and defendant Richman in the amount of
82 each. Plaintiff is entitled to receive from
nd the total sum of \$7,833.95, and defendant
an is entitled to receive from said fund the

incurred by her in said escrow on behalf of defendant Richman as the seller therein.

It is further ordered, adjudged and decreed that defendant Richman is not entitled to any credit for any rents collected by plaintiff, nor is defendant Richman entitled to any credit for the said cash fund paid over to plaintiff.

It is finally ordered that neither plaintiff nor defendant Richman is entitled to any credit against said fund except for those specifically herein granted.

The receiver is ordered to disburse the funds in his hands in accordance herewith, except as otherwise ordered by the Court or the Appellate Court may award costs and fees to the receiver and his attorney in connection with any appeal.

Dated this 19th day of November, 1954.

/s/ ERNEST A. TOLIN,
Judge.

Affidavit of Service by Mail attached.

[Endorsed]: Filed and entered Nov. 19, 1954

[Title of District Court and Cause.]

NOTICE OF APPEAL

Is from the Order and Judgment In Re Settlement of Receiver's Account, Fees and Distribution of Funds in Hands of Receiver, docketed and filed the 19th day of November, 1954.

Dated: December 15, 1954.

BRADY, NOSSAMAN & PAULSTON

and

JOSEPH T. ENRIGHT,

By JOSEPH T. ENRIGHT, [249]

Acknowledgment of Service by Mail attached.

Witness my hand and seal this 15th day of December, 1954.

of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that plaintiff, Lyda Tidwell, hereby appeals to the Ninth Circuit Court of Appeals from that portion of the Order In Re Settlement of Receiver's Account, Fees and Distribution of Funds in Hands of Receiver, docketed and filed the 19th day of November, 1954, which awards the sum of \$4,974.56, or any part thereof, to defendant, Frederick I. Richman, and which denies the distribution to plaintiff, Lyda Tidwell, to the sum of \$7,833.95. Plaintiff does not appeal from

Dated: December 17, 1954.

MARTIN, HAHN & CAMUSI

/s/ By WILLIAM P. CAMUSI,
Attorneys for plaintiff and
Appellant, Lyda Tidwell.

Affidavit of Service by Mail attached.

[Endorsed]: Filed December 20, 1954.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund I. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing numbered 1 to 261 inclusive, contain the original

Memorandum of Decision;

Order Appointing Receiver;

Ex Parte Motion for Order Staying Proceedings;

Oath of Receiver;

Bond of Receiver;

Notice of Motions re Appointment of a District Receiver;

Petition for Authority to Employ Counsel;

Order Authorizing Receiver to Employ Counsel;

Affidavit of Service by Mail of Order Authorizing Receiver to Employ Counsel;

Petition for Authority to Pay Christmas Bonus

avit of Service of Order Appointing Re-

ion for Authority to Renovate Individual
ments, etc.;

ent to Petition for Authority to Renovate
lual Apartments, etc.;

ver to Petition of Receiver for Authority to
ate and Consent of Plaintiff;

ment for Revocation and Avoidance of
and Appointment of Receiver;

r Extending Time Within Which Receiver
File His First Report and Petition for In-
ons, and Supporting Affidavit;

ce of Application and Motion for Permanent
er;

ement of Reasons and Points and Authorities
oport of Application and Motion for Per-
t Receiver;

ulation filed Feb. 26, 1954;

er filed Feb. 26, 1954;

tion for Allowance of Fees to Attorneys for
er;

t and Final Report of Receiver and Petition
lowance of Fee to Receiver;

ce of Hearing on (1) First and Final Report
ceiver, (2) Petition for Allowance of Fee to
er, and (3) Petition for Allowance of Fees

Dismissal With Prejudice;

Objections and Answer to Report and Petition of Receiver and his Attorney for Fees;

Objections to First and Final Report of Receiver;

Plaintiff's Reply to Objections of Defendant Frederick I. Richman;

Plaintiff Lyda Tidwell's Points and Authorities in Support of her Objections and her Reply to Defendant Richman's Objections;

Petition to Disqualify and Authorities;

Supplemental Petition for Allowance of Fees Attorneys for Receiver;

Pre-trial Memo, Receiver's Fund;

Memorandum of Points and Authorities of Plaintiff, Lyda Tidwell, Regarding Pre-trial Hearing Distribution of Funds Remaining Under Control of Court;

Memorandum to Counsel re Disposition of Funds Remaining Under Control of Court and Allowance of Fees;

Memorandum to Counsel;

Statement of Objections of Roy E. Hallberg, Receiver, etc., to Plaintiff's Proposed Order of Settlement of Receiver's Account, Fees and Distribution of Funds in Hands of Receiver;

Order in re Settlement of Receiver's Account, Fees and Distribution of Funds in Hands of Receiver;

Designation of Contents of Record on Appeal, by
Plaintiff;

Designation of Appeal to the Ninth Circuit Court of
Appeals, by Plaintiff;

Designation of Contents of Record on Appeal, by
Plaintiff;

Plaintiff's Designation of Portions of Record,
Exhibits, and Evidence to be Contained in
Record on Appeal;

Order for Extension of Time for Reporter
Rule 73g and Order; and a full, true and
correct copy of the Minutes of the Court on No-
vember 30, 1953; December 2, 3, 4, 1953; April 12,
June 21, 1954; which, together with the orig-
inal Plaintiff's Exhibits A-H inc. on the Pre-
liminary Hearing June 21, 1954; and the original Re-
sponse Exhibits 1-4 inc., and Defendant's Exhibits
C. on the hearing re payment of fees to the
Plaintiff and his attorney; the Depositions of John
and of Roy E. Hallberg, each taken April
4; and 17 volumes of Reporter's Transcripts
of Proceedings had on Nov. 30, 1953; Dec. 1, 2, 3,
4; Jan. 15, 1954; April 12, 1954; May 12,
May 13, 14, 17, 1954; June 7, 8, 18, 21, 1954;
July 7, 1954; Oct. 12, 1954; all in said cause, con-
stitute the transcript of record on appeal to the
United States Court of Appeals for the Ninth Cir-

Witness my hand and the seal of said District Court, this 25th day of March, 1955.

[Seal]

EDMUND L. SMITH,
Clerk

/s/ By THEODORE HOCKE,
Chief Deputy

In the United States District Court for the Southern District of California, Central Division

No. 13,742-T—Civil

LYDA TIDWELL, etc., Plaintiff

vs.

FREDERICK I. RICHMAN, et al., Defendant

TRANSCRIPT OF PROCEEDINGS

Los Angeles, Calif., Monday, Nov. 30, 1955

Honorable Ernest A. Tolin, Judge Presiding

Appearances: For the Plaintiff: William Camusi, 530 West Sixth St., Suite 701, Los Angeles, Calif. For the Defendants: Joseph T. Enright, 13 South Spring St., Los Angeles 13, Calif. [1*]

(The following proceedings were had in chambers:)

The Court: Let's come on the record. Mr. Camusi is here for the plaintiff, and Mr. Enright

endant. The court has filed a memorandum
in the case.

many copies would you like, Mr. Enright?

Enright: If there could be two, I would ap-
peal it, but, if not, I can have copies made.

Court: I will hand you two.

Camusi: Do you have two for me?

Court: Yes. If anyone needs three, they
have three, because I asked Miss Leland to
make a number of copies.

Enright: I will take three. Mr. Nossaman
wants one.

Camusi: And I could use another one, if
you give it, Judge.

Court: All right.

(The copies were handed to counsel.)

Court: It has been, as you will note from
the record as the clerk probably has already told
you, the court's conclusion that the plaintiff should
have a receiver appointed and that a receiver should be appointed.
The court has called up the application for receiver-
ship which has been continued from time to time,
[2] on it in chambers without there having
been a renewal of the motion.

Receiverships are always complicated somewhat
because they start in the middle of an accounting period
of some sort, and while it isn't a provident case of
delay to wait until the beginning of a new

here in making adjustments and prorations, and
forth.

Although this memorandum is almost 19
long, a great deal has not been stated, and so
it, due to the desire of the court to avoid a
period of submission, has not been elaborated
to the extent that it was thought out by the
because to articulate sometimes the thoughts
would be set forth in detail in a memorandum
take more time here than would be consistent
a short submission period.

Now, we called Mr. Camusi and asked him
draw a suggested order for the appointment
receiver, and I will tell you tentatively what
court's idea was with respect to it.

I have on file here a great number of names
lawyers, some of them highly reputable and
experienced in receivership matters, who have
in from time to time and suggested that
would like to have receivership appointments.
But it has seemed to me that it would probably
more in keeping with the requirements of
case to appoint someone not a lawyer, but who
a particular acquaintance with the problems
inhere in the management of income prop-

I have asked for the names of some such people
from various bankers, not acquainting them
course, with the particular case, and I have
viewed a number of them. I have also thought

thinking that with Mr. Richman being an
y, it would perhaps be well to avoid having
er here who might have had either pleasant
erse experience with him, and I have come
ntative selection of a man named Mr. Roy
lberg.

Hallberg was for some years associated with
erty management operation in Chicago, and
siderable acquaintance and experience in that
f work. Since coming to California he has
arious positions with different types of cor-
ns, and has been engaged in the manage-
f property for elderly relatives who have
rable apartment property in Southern Cali-

led him and found that he is available, and
l him to come in here at about 2:00 o'clock
so that counsel could meet him. It was my
on to appoint him, [4] and inasmuch as the
r ordinarily needs counsel, to suggest to him
take legal counsel, not from any of the at-
s in this case, but that he select an attorney
own choice, whom the court would approve
elects any reputable member of the bar. He
ne if he could consult for his legal advice,
such as the receiver takes from the court,
n attorney who has until very recently been
'Melveny & Myers, which I understand is
e that has handled Mr. Hallberg's own legal

leave that firm for the purpose of setting up a private practice of his own.

Now, does anyone have an objection to Mr. Hallberg, or do you want to question him, or do you have an objection to his employment of counsel?

Mr. Camusi: Plaintiff's position, your Honor, is that we don't know Mr. Hallberg, but I guess your Honor has made quite an elaborate investigation, and it is our desire that there be some competent man unknown to either side or to counsel, and so with that statement, why, we are willing to go on the court's opinion of the man it has chosen.

The Court: I have known Mr. Hallberg in a rather offhand way for some time, but he is not a particular friend or even a close acquaintance, though his name has come up in [5] connection with the consideration of other names. I talked the other day to Mr. Paul W. Elmquist, who is the head of the Paul W. Elmquist Company, and it turns out, I think, that he is about as well qualified as Mr. Hallberg, but he has had various associations which might turn out to, as you say, ring around with him, and I had felt finally, after talking to these various people, that it would be better to select some one who, while knowing property management, had never engaged in it except as to his own and his immediate relatives' property in this locality.

I am hopeful the form of the order you

it ready, will be final, so that there will not liquidation of assets.

and in mind, first, calling upon some of the judicial receivers about town, and then it occurred to me that the usual professional receiver we know in this locality has ordinarily had as an objective of receivership the liquidation of the estate rather than the preservation of it and its distribution, and I didn't want to have a receiver here who had in mind turning property into cash by changing the form of the corpus of the estate materially. I think it ought to be kept as nearly as possible in status quo until judgment becomes final.]

I would like to hear some comment from counsel as to what that would be an appropriate bond.

Enright: The evidence shows the amount of money being received, gross moneys being received each month. The evidence further shows that the moneys had been expended each month in payment of operating expenses or reduction of Union indebtedness. The evidence further shows that at the end of the trial defendant presented evidence that there was an outstanding secured obligation upon one of the apartment houses, the name of which I recollect to be the Oliver Cromwell. If it isn't that one, it is some other one——

Camusi: That is correct.

The evidence further showed that Internal Revenue's investigation had resulted in its objection to the rates of depreciation theretofore taken by the trustees or the managing agent.

The sum total of this status of the evidence was that there will be no substantial amount of cash on hand from month to month, other than the monthly collections, and, therefore, it would seem to me that all parties should endeavor to keep the expense, and to fix the bond at an amount not exceeding one and one-half times monthly collections. Those being the only personal property except a few notes receivable, and I can't call from memory, it would seem to me that the bond should be commensurate with the amount—no cash amount, but the value of the property that one might have on one might, and we certainly do not conjecture as to one might, appropriate. That is my thought as to the bond.

The Court: I had been thinking loosely in the way in which probate bonds are fixed, and that the bond should be sufficient to cover the value of the readily liquidatable assets, where it would not be for a title search, or something of that nature.

Mr. Enright: That is right.

The Court: So how much money would a person acting in this capacity have in his possession at any one time?

Mr. Enright: I don't see how it could be more than a few hundred dollars at any one time.

are. In probate practice I believe they take
ar; they take a whole year of income. But
uld be an awfully high bond in this case, and
with Mr. Enright. I don't think we should
the probate rule in that respect.

I don't know, but I was thinking of a bond
ere between fifty and one hundred thousand
Mr. Enright mentions one and a half times
y rental collections. That [8] would be some-
around fifty thousand.

Court: Are all of these indebtednesses amor-
that there are monthly payments upon trust

Enright: There is only one that I know of.

Camusi: There is only one, and the pay-
n that is about \$5,000 a month.

Enright: That is my recollection, about
a month.

Court: I take it, then, you are thinking of
in terms of about \$50,000.

Camusi: I would say \$75,000 personally.

Court: 75,000.

Camusi: With some kind of a provision that
ys on hand exceed that amount, it might be
ed upon order of the court, or something.

Court: Yes.

Cleaver: Mr. Hallberg is here.

Court: Have him come in.

Therumpen: Mr. Hallberg enters chambers.

ter, which I discussed with you last week, I have asked counsel if there is any objection to this course, the defendant feels no doubt that he should have won the case, but since a receiver [9] is appointed—whether they have any objection to the selection of the court as receiver.

Now, they haven't announced any objection, they don't know you. I have explained to them that you have had experience in this type of work in Chicago, that your main vocation for some time was in the management of real properties, and at times in connection with court receiverships, that your experience in it locally has been in the management of your own real properties, and that these were of income nature, and of similar properties owned by either you or your wife's relatives.

Mr. Hallberg: That is correct.

The Court: Now, if counsel wish to question Hallberg before the appointment is actually made, the clerk will swear him, and you may ask any questions you wish.

Mr. Enright: On behalf of the defendant, Your Honor, I am in no position at this time to impeach or impegate this gentleman. I am satisfied that your Honor would not have selected anyone except a man of not only integrity, but of ability. But my objection goes to the proposition of the appointment, Your Honor, and I will seek, and now seek time to consider what steps are required under the procedure of this court to bind against him.

see, your Honor, my basic position is that I present a member of the bar, and I do represent a person who, [10] I submit, under all the circumstances has never taken one red cent from this estate from the date of its execution and for years in the operation of the joint venture.

Considering those circumstances, that is, a person who has a license, a professional license, and is here to appropriate anything, why, his moral responsibility would be involved, I do plead that this appointment be withheld for a few days, during which I will research the procedural aspects of an appointment; and, secondly, ascertain what expenses would be incurred if he were to bond against the appointment of a receiver, because it is my recollection under Rule 56—I believe it is 56—concerning the appointment of receivers, that it is an appealable order, and I am sure the court appreciates that as trial attorney, I cannot make these decisions without consultation with my senior, Mr. Nosse, and with my client, also an attorney.

I would seriously plead for a little time here in considering the court's decision, and considering the appointment. But never do I question the appointment upon the ground of the integrity of this person's qualifications, because I have no doubt that the court thoroughly investigated that aspect before selecting Mr. Holmberg—is that it?

Court: Holmberg

state that to me personally, and so far as I state on behalf of my client, his selection of an attorney from the O'Melveny & Myers firm seems very good to me, because it is one of the finest firms in the community.

The Court: What I understand he has in mind is the selection of an attorney who is about to leave them,—

Mr. Hallberg: He has just left.

The Court: —for the purpose of forming his own legal practice. What is his name, Mr. Hallberg?

Mr. Hallberg: John Whyte. That is W-h-y-t-e.

The Court: Of course, an order appointing a receiver is an appealable order, but it cannot be appealed from until it is made.

Mr. Enright: Yes.

The Court: I think it is not appropriate for the defendant to remain longer in control as trustee for several reasons which do not reflect upon whether or not he has been taking money from the trust. I don't understand that there is any charge that he has ever stolen anything. Of course, there is an action for an accounting based upon various grounds, which we need not enumerate here, which include, among other things, that he has allowed himself, in my opinion, to think, excess fees to himself. Is that not it?

Mr. Camusi: That is one of the grounds.

The Court: Then, too, one of the matters which is treated in the memorandum that is today

on, and since it has been determined that not entitled to enter into that, or, at least, its entry into it was voidable at the option of the trustor, it would not appear just that he should continue to earn or receive the considerable amounts which the contract provided for him during the extended period that elapses between the appointment and appeal in cases of this character.

I would like Mr. Hallberg to begin his duties as receiver upon his qualifying.

Can you if you can have an order for us, Mr. Ca-

—
Camusi: I will have it.

Court: —we will either execute it, or make some revision in it.

Now these gentlemen, Mr. Hallberg, have talked about the bond. The bond that is commonly required of an executor or administrator under California law is for one year's gross income from the property. The properties here would produce such a figure that the one year's gross income would be quite considerable. It is rather contemplated that the beneficiaries under this trust will receive funds from the property over time, and there are indebtednesses and recurring expenses, which a receiver would have to administer, which will mean that he would not have in his possession or under his control the ordinary course of administration a receiver's income. So it has been suggested by

in this case, and the court will and does fix in that sum.

Do you have an order of appointment drawn?
Mr. Camusi?

Mr. Camusi: It has been drawn, your Honor, and I hope to get it up here shortly this afternoon.

Mr. Enright: May it please the court,——

The Court: Yes.

Mr. Enright: ——I haven't read the decision, the written decision filed this day, but may I make a comment upon the statement just made by the counsel, that is, concerning the fees received by Mr. Enright, the defendant.

If that be the occasion for the appointment of a receiver, this day or within the next few days, again I point out that the most he could do would be to pay himself, and I here offer to see that he does not pay himself the fees received under the contract, and that the moneys can be impounded until we have had opportunity to present the impeachable aspects of the appointment of a receiver.

The Court: There are considerable comments on the record, and the court is going to appoint a receiver as soon as an [14] appropriate order is presented to the court.

Mr. Enright: I just want to make my position clear.

The Court: Yes. Now, if you gentlemen will consult with the receiver whom I have indicated,

ns which you feel might enter into the em-
ent he is about to assume.

ow you have another engagement, Mr. En-
out you might take just along enough to get
hange of names, addresses, telephone num-
nd the like.

a going to suggest to Mr. Hallberg, who I
has a place of business somewhere around
briel or San Marino, or South Pasadena,—

Hallberg: It is in Pasadena.

Court: And you live at Corona del Mar?

Hallberg: That is correct.

Court: —that it would probably be a con-
e to the estate, and possibly an economy to
ome of the untenanted apartment or apart-
be made a headquarters for the receiver-
ring its duration, so that you would have a
arters for the purpose of this case in one of
erties which is to be managed. But you can
at over with the attorneys.

Hallberg: Yes, sir. [15]

Court: I believe that is all we can do at
ment.

will have your order up during the day,
musi?

Camusi: Yes, sir.

Court: Then Mr. Hallberg can take over

other department, and I have to leave. We will operate in every respect with Mr. Hallberg.

The Court: Thank you. Mr. Cleaver, will you indicate that they have an agreeable place to work? They might want to use the witness room, or might use the jury room a more comfortable place, or they might prefer to use your room, although there are a lot of books in there.

Thank you, gentlemen. [16] * * * * *

Los Angeles, Tuesday, Dec. 1, 1953, 4:45 p.m.

The Court: All right, Mr. Wyatt.

Mr. Wyatt: We are in this position, if Your Honor please, we would like, if possible, to obtain a stay one way or another. We should like to know if the court will set the amount of bond that the defendant would be required to file in order to obtain a supersedeas bond.

The situation is this: Under the Federal Rules of Civil Procedure the defendant may obtain a stay of execution, as a matter of right, by filing a supersedeas bond. He can do that at or after the time of appeal.

It is doubtful whether he can do it before the appeal. And we are in this difficult predicament, that the defendant has not yet been served, that no judgment has been entered and he has received no appointment of a receiver.

The Court: Mr. Wyatt, I think perhaps the concern isn't quite as imminent as you have been

this, but I assumed that because he and his
y had been around visiting apartment build-
and informing the manager she should turn
over to him, that he complied with all those
ments. [2]

rather surprised to find he hasn't yet filed

Court: While there has been a receiver ap-
a great many times it has been that in other
s that maybe they let them have a little dif-
bonding procedure.

ed the bond. He went out to get it. I under-
ne bond would be presented to the court at
clock this morning. No one has been in.

Wyatt: I see. Well, the bond is only one of
enses. Frankly, we are trying to avoid, in
ng the stay pending the hearing of our mo-
which was the reason I submitted the other
tion for a stay pending the proceedings,
uch time as you could hear our battery of
s on the receivership, that that was the main
it is within the discretion of this court to
y order that he grants pending, well, in the
on of the court, upon such terms as he
just.

as my feeling at the time I submitted that
that if we could obtain a stay we would
one, the expense of a bond premium, if we
make a further showing to the court, we

be further stayed by granting the stay, until the motions could be heard, that the court would impute the expense of an accounting of these funds to which the receiver has already been attempting to obtain.

If he has not filed any bonds under a mistake under misapprehension, thinking he would get the funds without having filed the bond, that is another expense which may yet be avoided if we obtain an order staying the order until such time as the motions are heard on Thursday.

If I may, I would like to renew my motion under those circumstances, since I find out he hasn't obtained a bond himself.

The Court: The bond will have to be approved by the court and he isn't entitled to take over the estate, under the rules, that are in this district until he has posted a bond and taken the oath.

* * * * *

Los Angeles, Friday, Jan. 15, 1954, 2:40 p.m.

The Court: I am sorry, gentlemen, for coming 40 minutes late. I had two reasons for this.

One of them was a civic duty which kept me about 15 minutes, and the other was a writ of habeas corpus which was waiting for attention in chambers when I got back, and it took me until the present time.

All of this I hoped might bring about an amicable resolution of your dispute. If it does not, we are going to hear your case.

in five apartment houses included among
of the former Richman Trust.

court knows of the written approval which
n filed by the litigant Lyda Tidwell and the
on which has been filed by Mr. Richman and,
se, the petition which Mr. Hallberg filed.

t we might do, unless you have arrived at
isposition, would be to have Mr. Hallberg
e stand and let anyone question him who
bearing in mind, I hope, that the judge
whatever is filed here. I am not ignorant of
ne issue is. But ask him any questions that
nk should be brought out to give us a proper
[2] upon which to act, and then I will hear
rguments or comments.

nyone thinks of a better way to proceed, let
ow.

Enright: Your Honor, it may be a better
proceed in this way: That I do not construe
chmond's answer to the petition as an ob-
at all. We construe his answer to be an at-
on his part, and in his behalf, to inform the
er as best we can concerning this property
Mr. Richman had for some period of time
d.

defendant feels and believes that the Re-
should have full authority to spend all
available to carry out a program of rehabil-
the property. If he, the Receiver, is of the

coming in, those should be received, and any moneys in his possession, to properly take care of those properties.

Our answer is one drafted with the intent for the purpose of giving to the Receiver our knowledge based upon Mr. Richman's, I can just a little more than 20 years' experience in operating multiple income property in this immediate vicinity.

So I do not consider we have an objection.

The Court: Maybe "objection" was an unfortunate word. [3] I didn't construe what you would file as being a consent, that the Receiver go ahead and do the particular things in toto which the Receiver thinks, according to its petition should do.

So let's get, if we can get clarified, what should do now.

Do you think it might be worth-while to have him come up here and have him state what he thinks should be done, in order to properly place the properties into the best condition and to get the provident yield which can be expected in his administration?

Mr. Enright: I have no questions to ask, I ask you, of the Receiver on such a question.

Secondly, so far as Mr. Richman's answer is concerned, it is deemed without prejudice, that your Honor, filed in the manner which it is, without prejudice. I will say without prejudice because

Court: I understand that.

Enright: You do, your Honor?

Court: Yes. You take the position there have been a judgment for the defendant, and the appointment of a receiver and judgment plaintiff is not the result which the evidence arguments spelled out.

Enright: Yes, your Honor. [4]

Court: Well, that is the position usually the party who loses a lawsuit takes.

I understand, by being cooperative with the Receiver, nothing has been waived, and I appreciate that Mr. Hallberg, on occasions when he has been here, has told me of very nice cooperation that Mr. Richman has given him in regard to matters where they have had occasion to work together, and that even on some occasions Mr. Richman has gone beyond the mere request which the Receiver had made for information and had given the cooperation on a voluntary, very useful

What I want to know now is to have a foundation upon which we leave the court today for an order which will tell Mr. Hallberg definitely what he is to do in the matter, where he has asked us for directions.

He has come here somewhat in the spirit and attitude of an executor of an estate who asks for directions. And as we all know, that is a very

to the purpose we wish to accomplish ultimately by the judgment, and without bringing any for litigation over the things that have proceeded in this matter.

Mr. Enright: I can only say, your Honor, the best I could do would be to merely ask that the Receiver read the [5] answer I drafted and to then suggest that if the Receiver desires Mr. Richman's views upon a particular problem pertaining to a program on any one of the houses or as to the houses that I would appreciate his consultation direct with Mr. Richman.

I am not sufficiently informed in finances of individual apartment house operations to cross-examine or examine Mr. Hallberg.

Secondly, I wouldn't feel in a position to conduct such an examination, because to me it is a day-to-day and current problem that anyone managing and operating properties in excess of a value of a million dollars has. He must have authority, we must have discretion. He must have discretion in exercising that authority.

That is all I have to say on that score.

The Court: Mr. Whyte, do you have anything that you think ought to be further brought to the court's attention?

Mr. Whyte: There are one or two facts which are not incorporated in the petition which I intend to file with the court. I thought that for the purpose of this hearing, I should not want to present

adduce one or two additional facts in support of the petition. [6]

ROY E. HALLBERG

as a witness in his own behalf, having been duly sworn, was examined and testified as follows:

Clerk: Please be seated.

Q: Full name?

A: Witness: Roy E. Hallberg.

Direct Examination

(By Mr. Whyte): Mr. Hallberg, calling attention to the fact that your petition for authority to renovate was filed on December 18, 1953, and that this is January 15, 1954, are you aware with any change in the situation which has taken place at the Fountain Manor Apartment since the date of filing your petition for authority to renovate?

A: We have had four vacancies develop practically overnight. These vacancies apparently were caused by the apartments not being in tenable condition. By that I mean they were getting quite dilapidated. The entire effect there was one that the tenants would not be conducive to continue living there.

Q: Did you go out and claimed they found better apartments in the area in better condition at

(Testimony of Roy E. Hallberg.)

they complained of? [7] A. They did,

Q. That, you say, has been quite recently?

A. Practically overnight, the last two nights.

Q. Have you had any trouble with the heating at the various apartment houses?

A. I understand they are giving considerable trouble in certain apartments. And it is quite apparent something will have to be done there.

Q. Did you have in mind using some of that money for renovation to take care of that heating problem? A. Yes.

Q. What problems have you had at the West Arms Apartment House recently, in regard to decorating of apartments?

A. Well, we took over the building on January—December 1st. There were seven vacancies. When in going into those apartments, they were extremely dirty and actually they were more or less carried out the decorating scheme of about 1928.

In other words, they weren't modern. They had a tan color that was more or less prevalent at that time, and the lamps were old, quite. I would say they were obsolete.

Q. May I interrupt just for a moment?

A. Yes.

Q. Is the decor, that is, the decorating scheme and the colors at each one of the five apartment buildings rather [8] old-fashioned?

mony of Roy E. Hallberg.)

and in there. It is carried through. Tan color
to be predominant.

Will you continue what you were telling us
the Western Arms?

That is not the present-day attitude toward
lamps in living rooms and homes; they want
color.

When I interrupted you, will you just con-
tinue with what you were telling us about the
Western Arms?

The lamps are quite old. They are not being
replaced any more. And they do create an atmosphere
in the home that isn't at all pleasant, especially when
the way modern apartments are being fur-

Did you have any experience at the Western
Arms where you renovated one of the apartments
and that, as a result of that renovation, you
were able to increase the rent?

Yes, we did have one that we tried out, just
to see what would happen. We were able to rent
it for a little bit more money.

What particular item of renovation did you

That was painting—different colors entirely
repainting the furniture, which is mostly over-

(Testimony of Roy E. Hallberg.)

Q. Did you then demand of the tenant an additional rent be paid?

A. Yes, we asked for a higher rent with a tenant, and they paid it.

The Court: What was the differential?

The Witness: It was only \$5.00 a month, but just shows what could be done.

Q. (By Mr. Whyte): Calling your attention to the Fountain Manor, is it true that one of the apartments there had been vacant for about two months at the time you took office as Receiver?

A. That is correct. That is a two-bedroom apartment and it had been shown any number of times to various prospective tenants. None of them would take it because, in the first place, the stove in that particular apartment was really pretty well worn out, and it would have cost about \$50.00 to replace that stove.

Q. What did you do with respect to the stove if anything?

A. We went out and succeeded in buying a new stove for, I think it was about \$99.98, and we replaced that in.

The next morning the first party took it and said, "Oh, boy, what a brand-new stove, what a brand-new stove," and we [10] rented it.

Q. For how much are you renting that apartment?
A. \$135.00 a month.

Q. That was the same apartment that had been

mony of Roy E. Hallberg.)

What is the condition as to the tile in the
sinks and the sinks at the Western Arms
apartments?

Well, they are—the tile is not in good con-
dition here. The sinks have tile all around on sort
of a shelf, a work space there, and also around
the sides of the sink. It has also about, I would
say 60 inches of tile back splash against the wall.
I would say 60 per cent of the apartments in that
building have tile in front of that sink that has big
pieces of tile broken out. It looks as though some-
body took a Ginger Ale bottle and was trying to
pop the cap off and just hit the top of it there, and
knocked some of the tile with it.

Isn't a very pleasant-looking sink the way it
looks? And there again the color of the tile is not
in harmony with the rest of the kitchen.

Have the tenants been complaining about
this condition?

Yes, some of the tenants have complained
about it. Of course, going into a kitchen that has
large pieces of tile [11] out right in front where
you can see it, it doesn't add to the appearance of that
kitchen.

Is it your particular purpose, if the court
gives you authority to renovate these apartments,
to renovate only individual apartments as it be-

(Testimony of Roy E. Hallberg.)

be allowed to go in and take these apartments when they became available and upgrade them.

I feel that by getting a better class of tenants attracted to the apartment we will be better off in the long run. The few dollars expended now, in the market that is getting a little bit more competitive, we are going to stand a little better—

Mr. Enright: Louder, please.

The Court: He said that with the market becoming a little more competitive——

The Witness: The market is becoming a little more competitive, and this experience we had last night and the night before, where four tenants moved out of one building, I think, points to the fact we are getting into a little more competitive market.

There are going to be a few more apartments available, and not having a completely accepted apartment to prospective tenants, our vacancy factor will gradually go up. I [12] think you will agree with me on that.

The Court: On the whole, has your vacancy factor gone up during your receivership?

The Witness: Up to this point our vacancy factor has gone down just a wee bit.

The Court: You have done some renovating before this petition?

The Witness: Yes, before this petition.

The Court: I might say counsel Mr. Hal-

nony of Roy E. Hallberg.)

r it was a stove, but I am just using that as of an example; apartment equipment. But particular small item.

about the second or third call I told him, ask it would be better if you filed a petition to get some authority, and let the people who are owners of this property know what you are in mind, rather than to have informal conversations with the judge in chambers about it."

The petition was forthcoming. But I had understood he had put a stove in and that he was going to meet the market, which I think Mr. Richmond would have to no doubt do if he were continuing management.

have had large insurance company operations in apartment house field which have come here very well, the past several years, but they are being increasingly reflected [13] in the situation where the over-population is not what it was, and the building and the like has been catching up with it.

Witness: Over at the Oliver Cromwell, around in that neighborhood, you have quite a number of brand-new buildings, and those are direct competition to the Oliver Cromwell.

Just mention that because I was over there the other day and checked on the other streets. But we are going to have the same situation all over

(Testimony of Roy E. Hallberg.)

tion, any financing beyond payment of bills of current income?

The Witness: No, sir. I believe that this came worked out from the moneys that are received in rent, without going outside for any additional financing.

The Court: Do any other counsel wish to ask Mr. Hallberg any questions?

Mr. Martin: We have no questions, your Honor. We filed our consent.

Cross Examination

Q. (By Mr. Enright): Mr. Hallberg, did you have an opportunity to examine the answer of Mr. Richman to your petition?

A. I just saw it this morning.

Q. I see. You do not have a copy of it? [1]

A. No, sir, not yet.

Q. I will furnish you with one.

The Court: It is quite full and quite detailed and sets forth a lot of experience that Mr. Richman tells us he has had with these particular properties. I think the Receiver should know about it and have the benefit of the information that is contained in it.

Thank you for giving him a copy.

Mr. Enright: That was the object of my coming in today. I was going to ask questions of Mr. Hallberg, was to make certain that the details set forth in the answer were correct to his attention.

mony of Roy E. Hallberg.)

ions of the answer which you had filed? He
t had an opportunity to read that, as you
so I hardly think it would be right for you
rrogate him concerning the subject matter
answer.

Enright: Oh, no, I wouldn't do that. I have
lished the object I had in asking Mr. Hall-
ne questions so far, that is, bringing to his
on this answer.

nk that is all, your Honor.

of our problems is that we have no knowl-
Mr. Hallberg's experience in the particular
ther than what your Honor told us the day
appointed. We would appreciate Mr. Hall-
oing over his problems, if he [15] will, to
egree with Mr. Richman from time to time,
meets with the approval of the parties, be-
that is the only means we can have.

I say, second-guessing Mr. Hallberg's judg-
n shifting sinks in the Western Arms Apart-
which our answer shows is rapidly becoming
ged district, so far as colored people are con-

Witness: They are not there yet, but they
adually encroaching from the south.

Court: They are certainly entitled to it, and
o pay rent.

(Testimony of Roy E. Hallberg.)

mind that someone will have to decide whether or not they want the attorney to operate it in its present status or revert it to a house renting to colored people.

The Witness: Actually, there are no colored people there. They are further south.

Q. (By Mr. Enright): They are just over Country Club Drive. That is a block away, is that right? A. Yes.

Q. And just a block down further.

A. Right around the corner there in that vicinity [16] there are a lot of homes on the street back.

Q. Oh, yes. I live there, I know it very well and I am quite certain——

Mr. Martin: It should be a safe territory if you live there, Mr. Enright.

Mr. Enright: Was there some question of safety?

Mr. Martin: No. I say we are not going to worry about it as long as you live near there; we feel we are in good hands.

The Court: The petition is drawn in terms asking for authority to do whatever improvement and renovation is necessary, to the extent of not exceeding \$500.00 for each unit in the apartment.

It is drawn in a way that leads the court

ony of Roy E. Hallberg.)

in others; but, in any event, a maximum of

ells us now he does not propose to incur any
m indebtedness or to do anything which
neur a hypothecation of the title to the prop-
that he can do what he has in mind out of
expenses, so the petition will be granted.

Whyte, I think you brought in an order,
you?

Whyte: I have not, your Honor. I think
icated [17] you might endorse on the peti-
t it is so ordered.

Camusi: We have no objection to it.

Court: If the clerk will hand up the peti-
will put that endorsement on it.

e is another matter in this case with which
ncerned. When were the objections, if any,
indings of fact and conclusions of law and
d judgment, or the alternate documents of
aracter——

Camusi: I understood the 16th.

Enright: That is right, the 16th that will
ile. I am afraid by mail, your Honor, be-
didn't finish dictating until just before I
p here.

Court: I understand that in lieu of having
el order drawn, which, of course, is some

(Testimony of Roy E. Hallberg.)

the bottom of the petition the words, "This
tion is granted."

Mr. Martin: So stipulated.

Mr. Camusi: So stipulated.

The Court: It is now so endorsed. You
your order, Mr. Hallberg.

The Witness: Thank you.

(Witness excused.)

The Court: We will look for either your ar
ments, [18] objections or acquiescence in for
to what has heretofore been filed, when I come
to court after the week end. If there is any di
we will have a chambers conference on it,
court hearing, whatever the nature of what is
indicates will be appropriate.

I don't mean for you not to say what you
I will look it over. If it appears to justify a
hearing, we will set it for hearing as near to i
diately as can be arranged, with the proper r
and recognition of the commitments of counse
the court, with what accords with other counse

If it turns out that you are as agreeable in
matter as you were in the one today, we will si
enter the one which has been agreed upon
form, understanding in no sense is it agreed
to being a decision on the merits of the case
only as to the form of judgment, form of fin
and conclusions. And then you can get on
either amicable disposition of this controversy

[Whereupon, at 3:15 o'clock p.m., Friday, January 15, 1954, an adjournment was taken.)

* [19]

Los Angeles, Monday, April 12, 1954, 11:00 a.m.

Clerk: 13,742, Lyda Tidwell vs. Frederick
man, et al., hearing on first and final report
Receiver; petition for allowance of fee to Re-
petition for allowance of fees to attorney for
r.

Court: Counsel, we have in mind there are
sic quarrels here. One as to how the money
hands of the Receiver shall be divided, that
t special credit shall be allowed to one party
ged against the other. I don't think we can
re of that in the time that remains today,
re going to take care of the other.

Other is a matter of allowance of fees for
Receiver and for his attorney.

ems to me we can excise that from the first
r it separately.

e is currently or there was as of the end
week, at least, a misapprehension, I think,
ow the Receiver came to be appointed.

Receiver didn't come to the court and make
resentation. The Receiver didn't ask for the
ement.

ve a list of many people who have come in
om time to time asking to be considered as

It is true that when he came in I asked him to state some things for counsel, so they would know whether they cared to have him embark as Receiver, having in mind that we would appoint someone else if this one were unsatisfactory to you. I think I told you so.

I have known this man, it is true, rather casually, but I have known of his reputation in the community and I have known of properties in this community which he has managed, which are reputed successful.

So I am not going to hear any evidence on whether he should have been appointed. The time has passed. He has now discharged his duty, and the question is shall he be paid, and if so, how much.

Now, we will proceed to hear that issue, and if there is a quarrel with his figures and you think you need an accounting, you think you need an audit by an accountant, we will allow a moderate but ample time for the procurement of such an audit.

However, if either litigant wants to have the figures audited, the court is going to have them audited and I will take the fact that you are willing to hire an auditor and have them audited as a circumstance that there is no confidence in the Receiver, a more substantial flag than simply saying he is a man of doubtful fidelity, the way it has been said in briefs, [3] which are not pleadings.

If you want to go ahead and have an audit

—I don't know yet who—satisfactory to
court, and one who doesn't know the Receiver.
I'll make him take an oath to that, and have
it.

It turns out the Receiver is either a miserable
deceiver, and these records are in bad shape, or
a man of no fidelity and has served in that
way here, or with that taint, then the expense
of audit will be assessed against the Receiver.
If it turns out there is no substance to it, it will be
charged to the person who made the challenge.

Enright: I take it the court desires a reply.

Court: No. The court desires evidence.

Enright: If your Honor please, I would
point out that we sincerely meant every word
expressed in our objection. We intend to produce
evidence in support of it.

I understand the law to be that upon a peti-
tion filed by a receiver, that upon an objection
made, that they constitute the pleadings, that
the complaint and an answer. And upon the issue
being joined, then the matter is set down for trial.
We desire to avail ourselves of that due process,
which is, a trial involving these moneys.

Court: You don't want to try it today?

Enright: No, your Honor.

Court: All right. It is going to be divided
as we have suggested, that is, we are going to try
the merits of what is said in the Receiver's

The balance of it can be deposited by the Receiver into the registry of the court. The registrar hold it while Mrs. Tidwell and Mr. Richman continue their timeless litigation.

Mr. Enright: That is acceptable. Now, as to the timeless litigation matter, I take it that that can be litigated between them and they can join the issue and get their litigation started. Or is that to be ruled on today, too?

The Court: No. From what you say you do not want anything heard or ruled on today.

Mr. Enright: No. I agree to this court hearing the attorney's fee and the Receiver's fee, and the matter be set down for trial at any time convenient to the parties and to the court.

But I do desire to take the Receiver's deposition and the attorney's deposition before then, and then make a further investigation of the record. [5]

Mr. Whyte: May I ask a question of counsel for your Honor?

The Court: Yes.

Mr. Whyte: Before we embark upon a long and terribly contested hearing as to the Receiver's fees and his attorney's fees, I would like to ask counsel the meaning of the last paragraph of his objections filed by him on behalf of Mr. Richman.

He says at page 12 of those objections, line

"That the trial of the issues created by the pleadings be not had until your answering def-

00 fees and the attorneys' petition for more \$3,000.00 fees and for such other and further as may be just and proper in the premises." I understand from that language that the defendant, Mr. Richman, desires a hearing in the matter that the Receiver wishes the court to assess him more than \$4,500.00 for his fees and the attorney more than \$3,000.00 for his fees?

Enright: I don't know what the Receiver is asking as yet. I asked you specifically, Mr. Whyte, and you wouldn't inform me so we could make a statement on our own part, but I didn't get that.

Whyte: The Receiver is asking for \$4,500.00 or \$5,000.00 [6] which I assume he is—from our telephonic conversation I assume that to be his position regarding extraordinary fees, then I assure you, sir, that I desire a trial on the merits.

Whyte: Do I understand then if the Receiver is willing to take \$4,500.00 and if his attorney is willing to take \$3,000.00 you do not desire a trial on the merits?

Enright: No. There has been further point made since then. As I understand the issue, there is a collateral issue now and I don't know what the point of the court is on it.

Whyte: I will receive a brief this morning and I can state it, if necessary, that the plaintiff Lyda Tidwell desires that this case be decided on the merits.

That, I understand, according to their plead here, is to be determined by this court and that separate and distinct new cause of action, issue.

And the most unusual part of it is that they now asking us to pay revenue stamps, pay insurance policy on the property as conveyed, when the escrow they signed carrying out that agreement specifically agrees that Lyda Tidwell pay the

But going back, Mr. Whyte, to your answer would say in this status of the record that we do to have a hearing [7] and an opportunity to present evidence, if the Receiver expects \$4,500.00 any sum substantially near that amount.

The Court: There is such a sharp conflict presented by the pleadings that, on one basis, the Receiver might get more than a thousand, and on others he might get ten. I can't tell from the pleadings. The court has to have the evidence, unless the parties are able to acknowledge certain things to be true.

The Receiver says that Mr. Richman let the property run down to where rain came in and ruined the otherwise suitable painting and cost the estate several hundred dollars to correct the fault which reasonably prudent management, even minimum management, I should say, would have prevented.

Mr. Richman, on the other hand, says that the Receiver has been tossing away money and failing to comply with lawful orders and has acted un-

don't know how a court can decide that by the charge of one against the other, or the

only thing a court can do is hear the evidence that we want to hear. But it is a salient point with regard to receiverships that receivers whatever they earn, if they do earn, should be fairly near to the close of their performance of duties.

I want to hear it as soon as due process—I [8] the spirit, not just the letter—will allow me to get ready for it. When will that be? Bear in mind we are going to try these separately.

Well against Richman, so far as the argument that come up in that matter, as distinguished from the receivership matter, has been so proximate a matter and the main issues have been disclosed—they involved hundreds of thousands of dollars—that this quarrel as to who gets what, on a relatively small amount in the Receiver's hands, we will just have to wait to where we can fit it on our calendar as we do ordinary litigation.

I would like to try the Receiver fees and his counsel's fees as soon as you feel that prudence and justice can bring it in court.

Enright: At the convenience of counsel and the court, I will be ready for trial within 20 days or so.

I want to comment, your Honor, though I can

ate that, your Honor. A contract was made filing this lawsuit in February 1953. There is no pleading before the court involving that contract as I see it.

The Court: But the money itself is before the court.

Mr. Enright: I appreciate that, but they advertised their rights in an original proceeding and have authority to [9] support our position on that score. We can cross that bridge when we come to it.

We do have to try the Receiver's fees and attorneys' fees before your Honor. I do not want it considered by anyone I am conceding the matter.

I will be ready for trial within 20 days, permitting the Receiver and his attorney can appear.

The Court: They want to be paid, I suppose, in the reasonably near future. The Receiver should make himself available for a deposition promptly.

Mr. Enright: If they can appear within the next ten days for their depositions, say, 15 days or 20 days after the taking of their depositions will be agreeable with me.

The Court: How long do you think it will take to try this question of Receivers' fees?

Mr. Enright: I will say not less than two weeks, your Honor.

The Court: Well, we like to think in terms of time, but I know how to budget.

Enright: I would say the objecting party's
e would reasonably take two days to present.

Court: How about you, Mr. Camusi?

Camusi: I won't need any time on this. I
ne only questions involved are questions of
don't have any [10] argument with the ac-
g, except as it affects, really, a division after
ment to the Receiver and his attorney.

Court: Do I understand then the argument,
as you getting it in, is how the money shall
ded, which is left after the Receiver gets
l.

Enright: Yes. And, of course, I may want
ment on what I think reasonable fees are.
far being involved, we are not making any
that the Receiver hasn't done the job given

Court: I will set it for Tuesday, May 11th.
ives us 29 days from today. Tuesday, May
9:30. If we set it at that time maybe we can
ough that same week.

are you going to have an audit?

Enright: I am not going to have an audit
I am going to further examine the records
understand are being kept intact by the
ff at the Oliver Cromwell. So far as an audit
erned, we are not causing an audit to be pre-

manager. They will be available any time you to see them.

The Court: All right. Any party to the a that wants an audit made can have it made court will not have [11] an audit made fo court, unless there be some audit made by o the parties litigant or a party litigant ask court to appoint an auditor.

There is no answer to that question now. can write me a letter if you change your mind

Mr. Enright: I suppose Mr. Whyte and I agree among ourselves for deposition, without ing it a part of the record.

Mr. Whyte: I believe so, counsel.

The Court: Is there anything else then w do on this day?

The other matter, so far as I see it, is j question of how the funds are to be divided. I the impression here that it was settled by the s lation under which we proceeded, which led to tlement of the case, and with the letters and a ments which were entered into contemporane with the stipulation, satisfaction of judgment the dismissal.

If it is to be disposed of on some other basi can or we will have to have that brought i appropriate pleading.

Is there anything else we can do?

Mr. Camusi: I won't comment to the court?

Court: Oh, yes. Of course, you will have date set——

Camusi: Pretrial—— [12]

Court: Perhaps we ought to have a pre-trial.

Camusi: I think there is a little accounting involved and maybe it will result in stipulation of issues, and leave the trial more or less a matter of law.

Court: Let's set a pretrial on it then. We are going to try the Receiver's fee issue on Tuesday May 11th.

We are pretrying the other issue on Friday, May 14th.

Enright: Your Honor, I again point out that this court does not have jurisdiction of a contract made by Lyda Tidwell and Frederick Richman on February 25, 1953.

Camusi: Let's argue that at the pretrial.

Court: That would appear prima facie to

Camusi says, "Let's argue it." I am going to keep my mind open until we hear the argument. You are going to try and inject a contract of partnership in here, why, let me have a memorandum of understanding of the pretrial on May 14th. You might as well have one, anyway, advising the court of what issues are respecting the division of the money after the lawful charges upon it have been exhausted by payment of the fees. And you

If not, we will just have to have some framing the issues by the pretrial process. [13]

Mr. Enright: That is on May 14th?

The Court: May 14th.

Mr. Enright: Yes, that is agreeable.

The Court: At 10:00 o'clock.

Mr. Enright: These memoranda now are to be concurrent?

The Court: They are not to be legal argument. You shall point out what the issues are with respect to disposition of this money and simply state the point or points of law that are involved, with citation to authorities.

But I do not think either the situation or the money involved requires that it be briefed, particularly in advance of framing the issues.

Mr. Enright: The time, now,—

The Court: 10:00 o'clock.

Mr. Enright: On the 14th we will submit the memorandum then.

The Court: The memorandum five days before then.

Mr. Enright: Five days before?

The Court: Yes. We will try the Receiver's case on the preceding Tuesday. That is, the Tuesday preceding the day we are going to have the pretrial conference.

(Whereupon, at 11:35 o'clock a.m., Monday,

April 12, 1954, an adjournment was taken.)

er additional facts that may not have been
either by the report of the Receiver or by
position.

Court: You both will have all the latitude
ed to develop pertinent evidence. However,
going to stick to the issues triable in this
ding. And this is not a proceeding to deter-
qualifications preliminary to [4] appointment.
o the Receiver's past employment, of course,
relevant upon the question of what capacity
ployment he has had in the past, because if
point a hundred-dollar-a-month clerk as a
r, he gets a different compensation and
a different quality of understanding to his
han if you appoint a hundred-thousand-dol-
ear bank president. It is important for that
e then not to determine whether the man
be appointed.

ve said before, but I think I will say again
e record of this proceeding today, that this
er did not ask for the appointment. The
ought him out on the court's own motion, the
dges of this division generally do. We dis-
having a list of people who want to be ap-
l receiver and prefer to generally make se-
s on our own knowledge or inquiry. * * * * *

Whyte: Is there no way we can get the
ion in evidence without reading it in its en-
e to make it a part of this record?

Mr. Whyte: That it be offered as an exhibit and I assume that that would require a settlement of the disputed objections and questions which are asked.

The Court: Some lawyers think it does, others think that it is sufficient to trust a jury to only consider the matters which are relevant and material.

Mr. Whyte: I am quite willing to do that, Your Honor; quite willing. * * * * *

Mr. Enright: My silence to be construed as acquiescence in anything that has been said.

First, the petition itself is the complaint, and at this moment I do not know what the Receiver seeks as to amount of compensation, in that he has failed to comply with Rule 18 (c) (4), which provides, "The notice shall show in what amount covering what period fees will be asked for."

Secondly, I view the objections filed in behalf of the defendant as an answer to the petition, and the petition and answer join issue. And I feel that the issue involving—I assume the Receiver desires an excess of \$4,000.00. It is indicated that he wants \$5,000.00. That that issue, involving that amount of money, should be tried in due course, that is, in the pleadings and the issues thereby created.

* * * * * [8]

Mr. Whyte: I am going to again renew my request that the deposition be introduced in evidence.

n having the Receiver again testify to matters which were covered in the deposition, which covered in his report.

the purpose of shortening the proceedings, suggesting that the deposition be annexed and placed in evidence as an exhibit to the Receiver's report and petition.

Court: Of course, depositions generally are available as a substitute for live testimony in court, if the witness is available.

There is an exception to that under what looks to be an anomalous thing in our civil rules, a deposition of a party may be received into evidence, introduced by either party, and it will be admitted.

But the rule provides that, Mr. Enright. And that is not in keeping with legal tradition the way we were taught it in law school, of legal practice the way it is engaged in in the Superior Court, I see any escape from receiving this deposition if it is offered. Do you? Any legal escape.

Enright: Well, there will be a motion to exclude [9] of the answers that were nonresponsive questions propounded. I will have to pursue the deposition with the usual manner in which one handles questions are propounded in court, and that remains in that deposition if it is received into evidence. I should be accorded that privilege.

Court: Yes. I would be glad to do so.

given which is in conflict with what was given in deposition, the deposition may be used either for memory refreshment or impeachment.

But let's have the direct evidence of Mr. Hallberg as it might be needed to supplement the report. The Court is agreeable to me to receive it as a portion of direct testimony.

You don't have to do that, Mr. Whyte, if you don't want to. That is what we think should be done.

Mr. Whyte: Pursuant to Rule 26, Federal Rules of Civil Procedure, I am going to offer the deposition of Mr. Hallberg in evidence.

The Court: It will be received as Received in evidence first in order.

Mr. Whyte: Thank you, your Honor. I am now willing to—

Mr. Enright: Do you have another subject matter now, Mr. Whyte?

Mr. Whyte: I was going to say that I am now willing to [10] submit the case in chief of Mr. Hallberg, the Receiver, upon the basis of his report and petition for fees, as filed with the court, together with his deposition which I have now offered in evidence in its entirety, and rest my case in chief upon those two documents.

The Court: That is the report and the deposition?

Mr. Whyte: Yes.

The Court: Is there any objection to the case in chief?

g. It is not even verified. I don't see how I quite accept that as a method of proof of

Court: You had better lay a foundation for its set forth for the report, as a report.

Whyte: I understood the court to suggest it, that the best method of doing this would be to submit the case in chief, the direct testimony, as the basis of the report.

Court: I did. I still think so, but your opponent doesn't. He says it is only a pleading. And I think technically he is correct. It is only a pleading unless the exhibits to it are received into evidence upon a proper foundation. Then that will make it an exhibit. Or unless the report itself be made to be the direct examination, the direct testimony of the Receiver, which has often been done [1] in these courts by stipulation. That then opens up a wide vista of cross examination.

Whyte: Then I will ask Mr. Enright whether or not he will stipulate that the Receiver's affidavit and petition for fees, together with the Receiver's deposition, may constitute the direct testimony of the Receiver in this case, subject to his cross examination on all of the matters set forth in the documents.

Enright: Are you through?

Whyte: Yes.

Enright: Now concerning the two subject

ceived in evidence. So far as I know, I have not seen the original deposition yet.

Secondly, reserve for a motion to strike those portions of the deposition which were not even responsive to questions, if there are any. That takes up the deposition part.

I understand it has been received in evidence.

The Court: We will order that it be stricken from evidence for the purpose of your having an opportunity to examine it and to object. I only admitted it in evidence because of the Federal Rules which Mr. Whyte read. I don't think it is particularly helpful, to just take depositions as evidence.

Mr. Enright: Now, concerning the petition itself, it is [12] not verified. There are many statements in the petition that——

Mr. Whyte: I beg your pardon. The petition is not verified.

Mr. Enright: Pardon me, Mr. Whyte, if I am in error.

The Court: I was in the same error. I read the petition last night, but I read simply the court's working copy and that working copy did not show a verification.

Mr. Enright: I would say that it would appear as though it was verified, that is, the copy I read. But I fell into the same error, your Honor.

In any event, the statements made in the petition, being pages 1 to 14, as distinguished from the exhibits, are not testimony or ultimate facts.

ize a great many that are outside the usual of a receiver's report, such as recommendation for future handling of the property. Those things a receiver might make by way of suggestion to his successor.

I't accept them here as probative on any act Receiver with respect to the conduct of his and I would not consider them that way.

You want to excise those portions of it, that be done. If you want to trust me to do it, I look at it with a very critical eye.

Enright: I would have to take the position [13] received in evidence it is received over objection.

Court: All right. There is another matter.

Whyte: Do I understand then, in response to my request for a stipulation, that the case in the direct testimony of the Receiver be submitted upon his petition and report, and his deposition that you are refusing to so stipulate?

Enright: I do so refuse.

Whyte: Thank you.

Enright: I have been served this morning with a supplemental petition for allowance of fees of Attorney and Receiver. I will check that during court recess. It was just handed to me a few moments ago by Mr. Whyte.

Court: Then Mr. Whyte, you will have to

ROY E. HALLBERG

called as a witness in his own behalf, having first duly sworn, was examined and testified as follows:

The Clerk: Please be seated.

Your full name, please?

The Witness: Roy E. Hallberg.

Mr. Whyte: I wonder if I might have the original report and petition of the Receiver. My clerk does not have the verification upon it.

The Clerk: Yes, sir.

The Court: The court should note for the record here that when the Receiver was engaged in the preparation of his report either Mr. Hallberg or Mr. Whyte—I don't recall which one—called and said, "Do we have to set forth a particular amount or may we leave it to the discretion of the court and ask for a reasonable fee?"

I told them I would like for them to set forth in detail what had been done and if they wanted to leave it to the court to determine a reasonable amount that the court would not insist upon compliance with the rule that an amount shall [15] be prayed for. But they could leave it as reasonable or they would state a specific amount.

I was then told that Mr. Whyte felt he ought to put in a specific amount, which he did, and Mr. Hallberg preferred to leave his to a prayer for a reasonable amount.

mony of Roy E. Hallberg.)

202 Seaview, Corona del Mar.

You were appointed as the Receiver in this position or about December 1, 1953, were you not?

That is correct.

And you gave up your active duties of management and operation of the affairs of the former Trust as of February 28, 1954, did you

That is correct.

[I direct your attention to the original of a report entitled "First and Final Report of Receiver and Petition for Allowance of Fee to Receiver, and more particularly to the verification on the inside of the blue backer to which that report and petition is annexed, and I ask you whether or not that is your signature which appears on the petition on the blue backer.

That is my signature.

Are you able to state for the court, with reference [16] to each and all of the matters alleged on pages 1 to 14 of that petition and report, that everything exclusive of the exhibits, are each one of the matters therein alleged true, to the best of your knowledge?

Enright: To which objection is made upon the ground it would call for a conclusion of the witness to state whether or not he or some agent or

(Testimony of Roy E. Hallberg.)

ther it is true, to the best of his knowledge and belief. That is a question often asked of people of executive capacity.

Objection overruled.

Mr. Enright: Would you read the question, Reporter? (The question was read.)

The Witness: They are all true, to the best of my knowledge.

The Court: Let's have a moment to ask a question. Now, the Receiver hasn't asked for any specific amount. He says he will take whatever is reasonable.

What do you think is reasonable, Mr. Enright? You have looked over the report. Your client himself had charge of these same properties over the course of some years and has made charges for services in connection with management.

Just what do you think would be a reasonable amount to [17] award this Receiver? There must not be any dispute here. You state it and we will ask him if that is acceptable to him.

Mr. Enright: Well, I can best answer the question this way: The man apparently was earning \$350 a month for his full time, at all times when he was acting as Receiver.

Apparently, he spent some week ends in rendering some services on this receivership. Had it been for his manner in rendering his services

ony of Roy E. Hallberg.)

ot for his unclean hands in making those
ntations, I would be inclined to compensate
his usual rate of compensation, which was
the past four years as follows:

orked for the Morgan Construction Tooth
y, where he received \$100.00 a week draw-
ount.

ates for about six or seven months in 1951
ted for Narmco—some manufacturer of fish-
s down here at Costa Mesa, where he re-
\$350.00 a month for about a year.

working now, as best I could find out, for
nty of Orange, and hadn't missed work for
nty of Orange when he was to be rendering
a personal services as Receiver. His com-
on for the County of Orange, as I under-
, is \$350.00, or \$355.00 a month. [18]

't know what the man feels he is entitled to
It places a burden on us, your Honor.

r as we are concerned, we found out later
partment houses are pretty much running
ves, and I am satisfied the evidence will
at.

for me to sit here and judge what we should
this man, who came into this receivership
ted by your Honor—I mean at your Honor's
ion, as I understand it from your state-
is running your Honor

(Testimony of Roy E. Hallberg.)

He wanted to know what it would involve, and I told him in a general way what it would be.

I made the call because, although my acquaintance with him has not been personally very extensive, I have known him casually and was a neighbor of his, and I have known of properties that I thought he was managing for an aged relative. It turns out from the deposition that it was his property.

I had known from just casual conversation that he had had a responsible part in the management of considerable income property in Chicago. I thought for a term of years. And it turns out that it was just a little over one year, if the deposition is right.

Knowing that Mr. Richman had carried on such ventures [19] while he managed these properties, I thought that while it would be part time, it would be a substantial part-time employment, and having confidence in the man's integrity and ability, I asked him if he would serve and he said he would.

Mr. Enright: I fully appreciate the situation before your Honor, so far as your Honor is concerned. I judge of this court. I hope you, in turn, will appreciate the position I am in here.

Now, the man says he managed property. The deposition shows, and I am sure it is the fact, that at least, I have the county records, County Recorder's Office checked, and I can produce the records.

mony of Roy E. Hallberg.)

ce records. That is the extent of his management of properties anywhere comparable to——

Court: What about the 400-unit apartments in Chicago?

Enright: Concerning those in the year of 1931 according to his own testimony in his deposition he was employed, not by a receiver, as we had to believe he was employed by a receiver, rather, the owner of bonds issued by a bank, and then by virtue of those bonds—I can't locate the man's name—he took over some properties. And presently Mr. Hallberg worked for him for about a year in 1931 in Chicago, in collecting rents. That is [20] different than managing property in Los Angeles in the year 1954 as a property manager. Certainly is completely foreign to what was presented to us as to the qualifications and experience of this Receiver.

Court: Before he was appointed I asked the counsel in and made Mr. Hallberg available to them and invited them to ask questions, and if there were any questions about the qualification of the Receiver to serve, the court would appreciate the questions being asked before the service was rendered, rather than at the completion of it.

However, no questions were asked then. Of course I appreciate counsel didn't know him, but it was open. They could have asked them

(Testimony of Roy E. Hallberg.)

trial in another court. I came to this court at
in the afternoon. I advised the court I relied
the court's investigation of the proposed receiver
that the court being satisfied with his integrity
the receiver—and then making the representation
to the court and to myself of his experience,
not interrogate him and I do not feel that was
bound by his, shall I say, improper statement
made on that day, which are as follows, at page

“The Court: Just have a chair, Mr. Hallberg.”

“The court has now given its decision in this
matter, which I discussed with you last week.
I have asked counsel if there is any objection.
Of course, the defendant feels no doubt that he should
have won the case, but since a receiver is
appointed—whether they have any objection to
as the selection of the court as receiver.

“Now, they haven't announced any objection,
but they don't know you. I have explained to you
that you have had experience in this type of thing
in Chicago, that your main vocation for some years
was in the management of real properties, sometimes
times in connection with court receiverships,
that your experience in it locally has been in the
management of your own real properties, which
were of income nature, and of similar properties
owned by either your or your wife's relative.

“Mr. Hallberg: That is correct.”

mony of Roy E. Hallberg.)

ing a person experienced to manage and op-

further point is this: Certainly, all parties
stood this man was going to be the receiver in
well as in name. He went to work for the
or Orange instead of being receiver. [22]

much we should compensate him I don't
I would like to hear the man say what he
is entitled to for his week ends or his trips
e.

Court: We had beter take full evidence on
e did.

Whyte: Shall I proceed, your Honor?

Court: Yes.

(By Mr. Whyte): Again directing your at-
to pages 1 to 14 of your "First and Final
and Petition for Allowance of Fees to Re-
, as to each and all of the matters therein
, exclusive of those which were alleged on
information and belief, would you now testify
n the stand, under oath, subject to cross ex-
ion, that each and all of those matters are
o your own personal knowledge?

To the best of my knowledge each and every
ent there is true.

And as to each and all matters therein al-
r these 18 pages which was stated that

(Testimony of Roy E. Hallberg.)

those matters are true according to your best information and belief? A. Yes.

Q. Now, calling your attention to the schedules or exhibits which are attached to your "First Final Report and Petition for Allowance of Fees as Receiver" filed herein on March 18, 1954, and directing your attention first to Schedule A, will you tell us by whom that Schedule was prepared, please?

A. This Schedule was originally prepared by Mr. Richman and presented to me, copy of which I signed at the time I received the various documents pertaining to all these apartments, the various deeds, insurance policies, promissory notes, books of account, records, all current.

Q. Are you able to state, Mr. Hallberg, whether in your capacity as Receiver of all the real and personal property constituting the former Richman Trust you received from Mr. Richman, the former trustee, each and all of the assets, properties, documents, books, records, et cetera, which are set forth on Schedule A annexed to your report and petition?

A. I received all these insofar as I was able to check the individual items in about 12 or 14 cases and also in the files; naturally, it would have taken months to go through every sheet that was there.

However, I did receive some additional information sometime in January on some particular controversy that was not given to me originally.

nony of Roy E. Hallberg.)

including February 28, 1954, you received and all of the assets, properties, books, records and et cetera, set forth on that Schedule?

I believe I did.

You employed a bookkeeper in the course of operations as Receiver of the real and personal property constituting the former Richman did you not? A. I did.

What was the name of the bookkeeper originally employed by you? A. Mr. Harrison.

Did you find it necessary or desirable to discontinue Mr. Harrison from his position at some time during the course of your receivership? A. I did.

Did you take any steps toward hiring someone to replace Mr. Harrison as your bookkeeper? I did.

Whom did you employ?

A Miss Findeisen.

May I inquire whether Miss Findeisen prepared this Schedule A, which is annexed to your report and report?

I believe that part of this was prepared by Miss Findeisen and the balance by Miss Cosgrove, Roy E. Hallberg.

What position was Mrs. Hallberg or Miss Cosgrove—by the way, are they one and the same person? They are one and the same. Miss Cosgrove is

(Testimony of Roy E. Hallberg.)

Mr. Enright: I will object on the ground it would be a conclusion for him to state.

The Court: Well, he was supposedly in charge of the receivership insofar as the receiver even though the court being ultimately in charge.

I think he can state the part that the several employees had in the setup. What she actually did she will have to tell. But he can tell what her position was.

The Witness: She was assisting me in a lot of the details connected with the operation of the buildings; because of her background and training she was quite effective in her handling of decorating, purchasing of materials, and overseeing the operations of the actual refurbishing of some of these apartments.

Mr. Enright: I move to strike the answer on the ground the answer is not responsive.

Secondly, on the ground the answer contains conclusions as to effectiveness and other similar to

The Court: Well, the answer does contain a bit of [26] conclusion. If it were allowed to stand I would consider it a statement of a reason why she was employed her, rather than what she accomplished.

Do you want it stricken, counsel?

We will strike the answer. Read the question. And we will ask for an answer of the question.

(The question was read.)

The Witness: She represented me in a good

mony of Roy E. Hallberg.)

By Mr. Whyte): Are you familiar with the which were performed by Mrs. Hallberg in ion with this receivership?

I definitely am.

What duties, in general, did she perform?

She performed various duties. Among them erseeing the decorating of a lot of these apart- the combining of color schemes to make the ents more desirable, and the selection of a lot erials that were used in draperies, in uphol- ; all with one idea in mind, of getting the possibly could for the least amount of money.

Court: We will suspend now until 2:00. We cess until that time.

Whereupon, at 12:00 o'clock noon, a recess taken until 2:00 o'clock p.m. of the same day.)

geles, Wednesday, May 12, 1954, 2:00 p.m.

Court: Knowing the bailiff would be away, im to arrange for a bailiff. I thought he had

.

Enright: May it please the court, this morn- court inquired of counsel for Defendant Rich- to what he would consider as a reasonable fee. ng the noontime I have further considered. not prepared to answer this morning, other e manner in which I did. And during the

(Testimony of Roy E. Hallberg.)

bookkeeping expenses incurred by the Receiver, the salaries of Mr. Harrison and Miss Find. It is less than \$1,700.00 from the Receiver's report whatever that figure is exactly.

Secondly, that the fee due to the defendant man for his services in the month of November listed as a payable or obligation of the trust paid to the defendant.

Thirdly, that the court hold that there should be added to the fund reported by the Receiver the following items:

A. \$785.00 petty cash, which the Receiver's report shows as being within his control as of February 28, 1945, the date of the termination of active duty in accordance with the order of court dated February 26, 1954, which [28] directed the Receiver to retain in his control moneys in the bank and moneys under his control.

B. The February 26th, 27th, and 28th collections of rents, which were collected by the managers which were turned over to the plaintiff Lyda Hallwell's agents, particularly, according to the deposition of Mr. Hallberg, Mr. Udall. The report should be approximately \$2,000.00, the report of the Receiver. We think it is approximately \$900.00. It could be subject to accounting, whatever the amount was, which I think can be ascertained.

C. That there be added to the fund of the trust

items that doesn't mean he pays this money

mony of Roy E. Hallberg.)

tain sums of money that are subject to settlement between the plaintiff and the defendant, so as the receiver reports the sum of money as on hand; it is of no consequence it be physically on hand. But merely that it is reported as a part of the accounting, that those moneys were there.

As to who they are chargeable to, I think that is a matter for the plaintiff and defendant to settle. The contract, I am sure, is quite clear, they are chargeable to the plaintiff. But that is another matter. That is the second issue we have reserved that we are going to submit at pretrial. [29]

Court: Your statement, Mr. Enright, brings in an offer, if it is an offer, matters which are involved in the dispute between plaintiff and defendant, so involved that I think we had better get on ahead and take the evidence.

Enright: Well, these items will involve matters that are in the accounting.

Whyte: Mr. Hallberg, will you resume the examination, please?

ROY E. HALLBERG

As a witness in his own behalf, having been lawfully duly sworn, resumed the stand and testified further as follows:

Direct Examination—(Continued)

Whyte: Miss Reporter, will you kindly read

(Testimony of Roy E. Hallberg.)

A. She made periodic trips every other practically, to the various apartments and picked up the moneys that were on hand and collected from the managers.

Q. What did she do with those moneys?

A. She brought those moneys into the office and made recordings of them and credited it to the proper buildings and deposit was made up and placed in the bank. [30]

Q. In what bank was that, Mr. Hallberg?

A. That was the bank over at Western Third, I believe.

Q. Did you maintain an account there as receiver of the assets of the former Richman?

A. I did.

Q. What, if anything, did Mrs. Hallberg do with reference to the bookkeeping?

A. She assisted Miss Findeisen in some of the bookkeeping work.

Q. Did she ever assist Mr. Harrison during the time that he was the bookkeeper for the estate?

A. I believe she did on one or two occasions.

Q. Did Mrs. Hallberg have anything to do with the purchasing of supplies for the various apartment houses?

A. She most certainly did, especially when the supplies were items that tended to enhance the appearance of the apartments.

Mr. Enright: I will move to strike the

mony of Roy E. Hallberg.)

Court: Motion granted.

(By Mr. Whyte): What compensation, if did Mrs. Hallberg receive from the receiver-tate for the services which you have detailed?

She has not received anything. [31]

Was she subject to your direction and con- the performance of those duties?

She most certainly was.

Were Mr. Harrison, the original bookkeeper, s successor, Miss Findeisen, subject to your on and control in connection with the per- nce of their bookkeeping duties?

They certainly were.

By the way, Mr. Hallberg, do you happen w whether your wife is a college graduate ?

She is a graduate of the University of Min-

What business training, if any, did she have before she married you or the early years r marriage?

She was with Payne-Weiner, a brokerage She was one of two investment counselors, omen counselors in New York.

One of two women investment counselors?

That is right. And her school training was ss administration

(Testimony of Roy E. Hallberg.)

A. She holds a real estate broker's license in State of California.

Q. You have stated that Mrs. Hallberg received no compensation for the services she performed in connection with [32] the receivership. What compensation, if any, did Mr. Harrison and Miss Findeisen receive for their bookkeeping duties?

A. Mr. Harrison received \$450.00 a month and Miss Findeisen \$300.00 a month.

Q. For how long, approximately, did Mr. Harrison serve as your bookkeeper?

A. About two months, approximately.

Q. And Miss Findeisen served for how long?

A. The balance of the term.

The Court: Were they same positions, that is, did the lady succeed Mr. Harrison or did she do a different type of work?

The Witness: She succeeded Mr. Harrison and did the same work.

Q. (By Mr. Whyte): Was that a full time bookkeeping job? A. It was.

Q. Drawing your attention again to Schedule A annexed to your "First and Final Report and Petition for Allowance of Fees", I believe you stated on your direct examination before the noon recess that this Schedule was prepared by Miss Findeisen and Mrs. Hallberg, is that correct?

A. That is correct.

Q. Do you know of your own personal knowledge

mony of Roy E. Hallberg.)

Enright: Just a minute. May I have your art——

Whyte: If I may withdraw the question, I came it again in a clear enough tone of voice will all understand it.

(By Mr. Whyte): Drawing your attention to Schedule A annexed to your Report and Petitioner Fees, the Schedule is headed "Inventory of Known Assets and Properties Constituting of the Former Richman Trust Over Which Receiver Assumed Possession, Custody and/or Control", my question to you is, did you receive Mr. Richman receipts showing the assets and liabilities of the former Richman trust which he transferred to your possession, custody and/or control?

He listed all these, all the items that he gave to me, and I signed a receipt for them. They were included with the exception, as I believe mentioned before, that the file that pertained to the carpet controversy with the City Building Department at one of the buildings, that was received some time in January. In other words, I did not have all of the files, apparently, at the time I took over the buildings, or the management of these buildings.

Speaking now only of the receipt which you

(Testimony of Roy E. Hallberg.)

tion of the Parapet file you have referred to, indexed on those receipts?

A. Yes. The files consisted of various and dry papers, and there were any number of there. I did not go through each individual file to see whether it pertained to that particular heading that was on the file.

However, I assumed they were, inasmuch as I had taken them right out of his file there and out of his own records, that they did pertain to the buildings. But actually this was all information regarding earlier transactions.

Q. Were those receipts prepared in Mr. Richman's office, if you know?

A. The original receipt was prepared in Mr. Richman's office, and I signed it.

Q. Did you check the properties and amounts turned over to you against the receipts, to determine whether or not you received all of the amounts and properties shown on the receipts?

A. As far as I could, I did, yes.

Q. Is it your testimony that the only item which you received that is not shown on the receipt is the file with reference to the Parapet at the O'Connell-Cromwell?

A. That is the Canterbury.

Q. The Canterbury? [35]

A. That is right, that was the only one.

Q. Now, are you able to state whether or not this Schedule A appeared to your report and

mony of Roy E. Hallberg.)

of the receipts furnished you by Mr. Rich-
A. They were, definitely.

You say they were. You mean——

Schedule A was prepared from the original
which I signed and checked as far as I could,
turned over to the subsequent management.

When you say the original file that you
do you refer to the original receipts which
signed?

The original receipts which I filed, yes—
I signed.

Thank you. Directing your attention further
Exhibit B, or, rather, Schedules B, C, and D
and to your Report and Petition for Allow-
of Fees, first directing specific attention to
Schedule B, which is headed "Schedule of Receipts
Disbursements of Roy E. Hallberg, as Receiver
Assets of the Former Richman Trust from
October 1, 1953, to and including February 28,
to that Schedule is attached several exhibits,
Exhibit I, Exhibit II, Exhibit III and Ex-
hibit V.

Are you able to tell us who prepared that Sched-

[36]

That was prepared by Mrs. Hallberg and
obtained from the books and records which
were in the office.

Will you briefly describe what these books

(Testimony of Roy E. Hallberg.)

Q. Did you have a journal of any kind?

A. There was a journal there that had kept up, yes.

Q. Did you continue to keep up a journal during your period of——

A. Kept a journal up to the end of the year, we wouldn't be breaking the accounting records for the calendar year.

Beginning January 1st we changed the system a little bit, so that we could more adequately make comparisons.

Q. Then what did the books and records of the receivership consist of after January 1, 1954?

A. Well, it consisted of a cash receipts and disbursements book and the general ledger.

Q. Were you the custodian of those records, that is to say, were they kept in your possession and under your control? A. They were.

Q. Were those records kept in the regular course of the business of the receivership? [37]

A. They were.

Q. Were the entries made in the ledger and cash receipts and disbursement books made substantially the same, at substantially the same time as the transactions which they purported to represent?

A. They were up to a point. After the first of the year Mr. Harrison began making entries on working sheets and was not transferring the entries into the ledger, which he had not succeeded in

mony of Roy E. Hallberg.)

to use working sheets and pencil notations, I changed when we—when Mr. Harrison was ated, when his work with us was terminated, within a short period we got everything in and brought it up to date.

About when were the entries made by Mr. on, on the work sheets you have mentioned, rred to the original books of account?

In February.

1954? A. Correct.

Calling your attention now to Schedule C at- to your Report and Petition, which Schedule ed “Disbursements Made by the Receiver as ed by the Court Covering Liabilities Incurred to February 28, 1954, but Not Paid Until That Date”, who prepared that [38] Sched- you know?

Mrs. Hallberg and Miss Findeisen.

Was that Schedule also prepared on the basis books of account kept by the receivership? Books of account, the invoices that came in cords that we had there in the office.

With reference to this caption on Schedule C, rsements Made by the Receiver Covering ties Incurred Prior to February 28, 1954, but aid Until After That Date”, why were the isted on this Schedule not paid until after
— 22, 1954?

(Testimony of Roy E. Hallberg.)

moneys we had on hand after a discussion with and Judge Tolin, and they were later paid.

Q. Is it a fact that the items listed on Schedule C are items reflecting materials delivered and services rendered to the receivership on or before February 28, 1954? A. They are.

Q. Now, with reference to the phrase in the title to the Schedule, "As Directed by the Court," did you have any conversation with the court regarding the payment of those items?

A. I did. [39]

Q. Will you please state when that conversation took place?

A. That conversation took place either the day following the termination of the receivership or the week following. I believe it was on the Sunday following the 28th of February.

Q. Perhaps I can refresh your recollection, Mr. Hallberg. Do you recall that I came down to you and Mrs. Hallberg at Corona Del Mar on the Sunday of golf at your home? A. Yes.

Q. Do you recall that I visited you there on Sunday, March 7th?

A. Yes, Sunday, March 7th, because you were there at the time I talked to the Judge.

Q. This conversation you had with the court was that in person or over the telephone?

A. It was over the telephone.

Q. Please state what was said with reference

mony of Roy E. Hallberg.)

edness incurred during the month of February and which I felt I was personally responsible telephoned Judge Tolin and asked him whether I could go ahead and pay these bills with the cash I had on hand. He so advised me.

When you say "he so advised me", did he tell you [40] to pay them?

He advised me to pay them.

Now, directing your attention to Schedule D referred to your Report and Petition, which is headed, "List of all Known Creditors of the Former Trust with Names, Addresses and Amounts of Claims, including both Specific and Unsecured Claims, as of March 10, 1954," who, if not you, prepared that Schedule?

Mrs. Hallberg and Miss Findeisen.

Was that Schedule also prepared on the basis of the entries made in the original books of account kept by the Receiver?

I do not—Inasmuch as we were operating the books on a cash basis, I do not believe they were reflected in the records. The only time they get into the record is when you pick them up as an account and pay them by cash.

Whyte: At this time, having laid the foundation, I believe, for the admission in evidence of the First and Final Report of Receiver and Petition

(Testimony of Roy E. Hallberg.)

the first 14 pages of pleading. There is no objection made to the Schedules themselves, itemization.

The Court: The Schedules will be received. The first [41] pages being largely pleading matters, I think we had better not receive them.

Mr. Whyte: May I address the court for a moment in that connection?

The Court: Yes.

Mr. Whyte: I believe the witness has testified that each and all of the matters alleged in the first 14 pages, except as to those matters on information and belief, about which he testified separately, are true, and that he was now able to testify here on the witness stand, under oath and subject to cross examination, that each and all of those matters set forth are true as of his own knowledge.

He has further testified that each and all of the matters set forth in that Report and Petition on information and belief, that he is willing to swear today on the witness stand, under oath, subject to cross examination, are true according to his information and belief.

It seems to me that that furnishes a foundation for the admission in evidence of everything mentioned in the Report. Otherwise, I would have asked him about each individual item separately.

The Court: I think it does. Of course, it contains many things which are semi-argumentative.

mony of Roy E. Hallberg.)

will reverse myself, Mr. Enright. I think the thing is admissible. It will be received.

Whyte: Thank you, your Honor. I should like to ask some questions concerning the number of individual apartments and the range of rentals of the five apartment houses which form the principal part of the assets of the former Richman Trust.

(By Mr. Whyte): First, with reference to the Canterbury Apartment Hotel, located in Hollywood, California, are you able to state how many individual apartments were contained in that apartment-hotel?

May I look at a note I have?

Surely, you may refresh your recollection.

The first one is the Canterbury.

That is true.

90 apartments. They range from \$65.00 to \$100.00.

By that you mean that the lowest apartment, the lowest-priced apartment at the Canterbury rents for \$65.00 and the highest-priced apartment rents for \$100.00?

A. That is correct.

Next, with reference to the Fountain Manor Apartment Hotel, located in Los Angeles, California, are you able to state how many individual apartments are contained in that building?

(Testimony of Roy E. Hallberg.)
ern Arms and the LaLoma Apartment Hotel
located in Los Angeles, California?

A. The Oliver Cromwell has 94 and their
range from \$45.00 to approximately \$115.00.

The Western Arms, 76 apartments, and app
mate range is from \$50.00 to \$95.00.

LaLoma, 55 apartments, with the approxi
range of \$45.00 to \$57.57.

Q. As to each of the five apartment houses,
your testimony that those rental ranges which
have mentioned are approximate figures?

A. Yes, because—Well, they are.

Q. Mr. Hallberg, during your tenure of
as Receiver, did each of the five apartment h
ings have a separate resident manager?

A. They did.

Q. What compensation, if any, did those
rate resident managers receive from the trust
tate?

A. They were paid a salary plus an apart

Q. Were those managers subject to your c
tion and control as Receiver of the properties
stituting the former Richman trust?

A. They were. [44]

The Court: How were they paid? Of course
Hallberg don't know how those managers
paid prior to the trust.

Did the trust bear the expense or did that

mony of Roy E. Hallberg.)

identical arrangement as carried on by the
er; no change at all by the Receiver.

Court: Thank you.

(By Mr. Whyte): During your tenure of
s Receiver were you responsible for the em-
nt of personnel and their discharge, if that
necessary? A. I was.

Did you find it necessary on any occasion to
ge an agent or employee of the receiver-

A. Yes, I discharged Mr. Harrison.

During the course of your tenure of office
eiver, were you charged with the duty of
ng the accumulation of moneys from the re-
hip properties to meet substantial current
ions, such as taxes or insurance?

I took over the properties, and there was
ion whether or not we would be able to meet
payment that had to be made in December.
ceeded in meeting the payment, and although
us very short for operating moneys, we man-
o carry on. [45]

Did you then plan the accumulation of
s from the receivership in the form of rents
hese apartment houses or other properties in
way as to meet current obligations of the
rship as they became due?

As much as we were a little short on cash,

(Testimony of Roy E. Hallberg.)

A. Well, insurance policies that were in were allowed to continue. When a policy expired I placed the insurance with a company who offered a lower rate by 10 per cent over the standard rate plus a dividend of approximately 25 per cent, which would be rebated or the dividends would be paid to the receivership or the trust at the expiration of those policies.

Q. What type of an insurance policy was this, Mr. Hallberg?

A. Those are fire insurance policies.

Q. Did you negotiate a new fire insurance policy with this company you have mentioned on a basis of the apartment buildings in the trust estate?

A. No, sir, I placed it with the LaLoma and the Oliver Cromwell.

Q. What, if anything, did you do with reference to the compensation insurance policies covering the respective [46] apartment buildings?

A. The policy had, or the—yes, the policy had been issued and a payment made. I stopped the payment on the check with the full knowledge of the full knowledge of the insurance broker, because it included some items that were Mr. Rich's personal items; we rewrote it.

Q. What items were those?

A. Oh, I think there was an automobile connected with it and some servants.

Q. Are you telling us that some of Mr.

mony of Roy E. Hallberg.)

policy covering one or more of these five apartment buildings at the time you took over this partnership?

Those items had to be taken out and we re-wrote the policy, and it was placed with the same

When you say "placed with the same broker" that you mean a new policy was written with the same company and broker as——

That is correct.

——previously? A. That is correct.

As to each of these questions I am directing you, regarding what you did in connection with the partnership, are you answering as to something you did in person, [47] Mr. Hallberg, and not through an agent?

What are you referring to?

For instance, when I have asked you about insurance negotiations that you had, did you handle them personally?

Yes, I did that personally.

Now, did you inspect the five apartment buildings from time to time, to determine if their heating plants were in good working order?

I certainly did inspect them, and as far as I could ascertain, I checked the physical property.

When you say you checked the physical property, what do you mean? Did you look at the

(Testimony of Roy E. Hallberg.)

Q. Did you look at the water heaters?

A. Looked at the water heaters, yes.

Q. Did you look at the basements?

A. I certainly did.

Q. Did you examine any of the vacant apartments to see if—

A. I certainly did. I visited many a vacant apartment.

Q. You did that with reference to all five of the apartment houses?

A. I was in vacant apartments in all five buildings. [48]

Q. Did you examine the boilers, the refrigeration systems, the heaters and the basements in the five apartment buildings?

A. I certainly did.

Q. What, if anything, did you do with reference to the repair of refrigeration equipment in the Western Arms?

A. Western Arms, about the middle of January—I am not positive of the exact date at this time—they had a box that refused to operate, turned to The manager, as she had been instructed, called the California Refrigeration Company. The California Refrigeration Company had been handling the apartment buildings for quite some time prior to my taking over, and they went to work on it and they worked all day

imony of Roy E. Hallberg.)

. Enright: May it please the court, I assume witness——

(By Mr. Whyte): I am asking for what you Mr. Hallberg.

e Court: Yes. We can't take from you what Hallberg said.

. Enright: I assume that the witness has so testified what he actually did or saw. If not, I prefer that his testimony be stricken.

(By Mr. Whyte): Proceed, Mr. Hallberg, confine [49] yourself to what you did or saw nally.

The report came in to me that evening that ere having difficulty with that building. I was hat the refrigeration people were on the job.

e following morning I found that they had l the gas out of the refrigeration system. It flooded system. Why they let all the gas out ll, that is really a question.

seems to be a difference of opinion as to the ctive merits of emptying all the gas out, al- h some companies will pump the gas into a ver and retain it and let it back into the sys- again.

ound out that the men who were repairing it hoked off or had cut out about eight boxes e they finally had the entire system down. And e found out that the manager of the building

(Testimony of Roy E. Hallberg.)

I got that information the following morning. And the manager of that apartment building called in another refrigeration company, to see what they could do, and see what could be done.

In the meantime the original company, Canine, had given us an estimate of approximately \$900.00 to repair the system, without giving any guaranty. The other firm said they could get it repaired and could get this in working order at a [50] good lower cost, and I gave them instructions to go ahead.

The first company wanted to do, wanted to know what to do, and I had a conference with both of them, with both refrigeration companies, and I called the second one, whose name I believe is the Mandie Refrigeration Company, to go ahead and finish the job at a considerably lower figure, without having the system tied up for the length of time the first company said they would have to have it tied up.

Q. On this matter of your inspection of the boilers, the refrigeration system, the water heaters, and the basements, physical plants, vacant apartments at these different apartment buildings, are you familiar with the workings of that type of physical plant from any previous experience that you had had? A. Oh, yes.

Q. Will you state what experience had qualified you to

mony of Roy E. Hallberg.)

when we were operating a receivership, had
s, heating plants, hot water boilers, and I
I had a fair working knowledge of the plants.

Are the buildings which you operated in Chi-
[51] that you have just averted to, are those
ildings in connection with the receivership in
of a particular bank in Chicago, which you
ed to in your deposition?

That is correct.

Did you do anything about changing the ac-
ng system which had been established and
ained under Mr. Richman's regime?

Yes, I did. I tried to set up a system whereby
ould have direct comparisons, one building
st the other, for a period of months, and also
reference of your checks, so that they could
ced very quickly through your records, book
ls, and the name of the account to whom you
or the account to whom the checks were is-

was a little confusing to try to locate bills
have been paid prior to December 1st in the
ed they were kept. The bills were supposedly
ed together for a given building, but often-
a service was rendered to two or three build-
and if you wanted to find out which building
you tried to find a bill for a given building,
happened to be in connection with the one

(Testimony of Roy E. Hallberg.)

and we set up a record system which I think quite adequate and simple, and gave a lot of information, without an awful lot [52] of record, if I may call it that in the record.

Q. Can you be a trifle more specific on that point: Is it the fact that under the accounting system kept by Mr. Richman that the profit and loss of the entire five apartment buildings was reflected as a whole only, or were you able to tell from the accounts kept by Mr. Richman what was the profit and loss from each individual apartment building?

A. It would take quite a bit of work to get that information out. You would have to analyze the accounts first.

Q. When you changed the accounting system to the manner you have described, was it possible to tell easily and quickly what profit or what loss had been sustained from each individual apartment building?

A. Yes, with one exception. There was a question as to whether certain expenditures, which had been carried into the improvement account, should have been classed as improvements. I know what was done, but from purely—from a truly accounting standpoint some of the expenditures were put into the improvement account, which I personally do not believe should have been placed in that account.

mony of Roy E. Hallberg.)

it and loss, because some of the expenditures
nting and things like [53] that definitely, in
nion, were expense and should not have been
ized.

Then can you briefly summarize for us, in a
rds, the advantages which accrued from your
of bookkeeping instituted under your re-
s Receiver, as compared with the system of
eping you found when you took office?

t were the advantages that were obtained
h the change in accounting you instituted?

Well, I believe that with my system—of
in two months you are not going to be able
much, but over a period of time these rec-
ould have reflected a comparative month-by-
report of the operation of this individual
g.

ally, what you want records for is to be able
whether you are making money on the in-
al buildings, to see whether or not it is eco-
lly feasible or sound, to see from an eco-
point of view you are working in the right
on, so you are making money.

Did you instruct the bookkeepers, Mr. Har-
nd Miss Findeisen, in regard to the method
ing up the new accounting system?

I had a little difficulty getting Mr. Harrison

(Testimony of Roy E. Hallberg.)

Q. Mr. Hallberg,—— A. Pardon me.

Q. ——We want to keep this responsive.

A. All right.

Q. My question was, did you instruct Mr. Larson and his successor, Miss Findeisen, in the matter of setting up and maintaining this new bookkeeping system, which you have mentioned?

A. I did.

Q. During the course of the receivership, did you personally ever assist actively in the bookkeeping duties? A. I did.

Q. What training and experience had you with regard to bookkeeping?

A. Well, I worked for J. L. Maulpey when I was going to school, doing public accounting.

Q. What did you major in at college?

A. I was in the school of business administration.

Q. At what school?

A. Northwestern University.

Q. What degree did you receive there?

A. Bachelor of Science and Commerce.

Q. What year did you receive that?

A. 1927.

Q. During this course of receivership in Chicago you [55] mentioned, did you have anything to do with the books governing the operation of the various properties in that receivership?

mony of Roy E. Hallberg.)

l records, and had a full time bookkeeper carried it on.

Whyte: In order that the record may be te, I think this is as good a time as any to n evidence the whole of Mr. Hallberg's dep-, pursuant to Rule 26 of the Federal Rules il Procedure. I so offer the entire deposition lence at this time.

Court: Have you had a chance to look at it?

Enright: No, I did not have a chance dur-e noon recess. I understood it was offered subject to my making a motion as soon as I chance to examine it.

Court: You wish to have an opportunity to further before the court rules on the offer?

Enright: Yes, I would, your Honor.

Court: All right. We will take the offer of oposition under submission.

Whyte: Thank you, your Honor. May I hat I will be through with Mr. Hallberg's examination shortly.

uld like, if possible, to put on an expert wit-s to the reasonable value of his services, who e in the courtroom, if Mr. Richman would his cross examination [56] of Mr. Hallberg, fter the expert has testified.

Enright: Yes.

Whyte: Would that be convenient Mr. En

(Testimony of Roy E. Hallberg.)

purpose of having the foundation in the evidence for the testimony of the expert witness who will put on a few minutes, as to the reasonableness of the services.

I would like, if possible, to have that deposition in subject to whatever motion to strike the court may wish to entertain.

The Court: Under these circumstances, we know this Rule 26 will make some part of the deposition proper, and probably all of it; I don't know.

So it will be admitted subject to a motion to strike. By motion to strike, we can then weed out the extraneous parts of it.

Mr. Whyte: Thank you.

Q. (By Mr. Whyte): Did you petition this court for authority to pay Christmas bonus to the employees of the former Richman trust?

A. I did.

Q. Was that petition granted?

A. It was. [57]

Q. Did you distribute bonus checks to them? Now, when I say "you"—Did your bookkeeper distribute bonus checks to those employees pursuant to the granting of that petition?

A. They were distributed, yes.

Q. Did you also petition this court for authority to renovate individual apartments in each

mony of Roy E. Hallberg.)

aring of that petition and testify from the
stand? A. I did.

Was that petition for authority to renovate
ual apartments granted? A. It was.

Pursuant to the granting of that petition,
u personally carry out a program of limited
tion? A. I did.

Will you tell us what you did in that re-

Enright: I assume the question is what he
rsonally?

Whyte: That is right.

Witness: I directed that certain of the va-
partments that were pretty well worn, shall
be redecorated—not along the lines they had
ainted— [58] but to make them a little bit
colorful, and to repair some of the broken
n some of the buildings. We had a lobby
ad to be painted, and matters similar to that.
(By Mr. Whyte): Did you ever check the
in the neighborhood of any of these apart-
buildings? A. I did.

In what particular neighborhoods did you
a check of comparative rentals?

Out around the Western Arms and the Oliver
vell. Also up at the Fountain Manor.

Please tell the court what you personally did

(Testimony of Roy E. Hallberg.)

about two blocks south, maybe a long block south.
And there is a building directly behind it, and I
went in there and checked the rentals there.

Q. All right. Tell us what you did with regard
to checking the rentals in the neighborhood of
Oliver Cromwell.

A. I went into buildings on the street and
street behind, both near to Wilshire and north of
the building, on streets adjacent to Normandy.

Q. When you say you went in those buildings,
did you ascertain what rents were being charged
at those locations?

A. That is right. [55]

Q. Please tell us what you personally did
regard to appraising the rentals in the neighbor-
hood of the Fountain Manor.

A. I went in one building south there. I
directed Mrs. Hallberg to check some of the ones
in the area. And we got a fair idea of that location.

Q. Did you do anything in regard to the
returns to be filed by the receivership estate?

A. Yes. That is the fiduciary return.

Q. Please tell us what you did in that connection
toward preparing and filing that return.

Mr. Enright: To which objection is made on
ground the return is the best evidence. Apparently
there is some uncertainty whether the return is
available any more.

The Court: What he did with respect to preparing

mony of Roy E. Hallberg.)

nt of Internal Revenue. Miss Brun was con-
who is in charge of the particular depart-
and she made the suggestion that the return
ried out along the manner of previous re-
that was done.

(By Mr. Whyte): Directing your attention
chedule B attached to your Report and Peti-
or Fees, can you point out to us on this
le whether it reflects the total or gross re-
received from receivership properties [60]
the three-month period of your receiver-

Inasmuch as these—as the buildings are op-
on a cash basis, the total receipts here are
ounts of money we received.

On page 2 of Schedule B there is a notation,
Receipts for Period from December 1953
including February 28, 1954". And following
here is a breakdown for the Canterbury,
in Manor, LaLoma, Oliver Cromwell, West-
rms, Other, and then a total figure of \$94,-

t does that figure, which I have just quoted,
?

That reflects the receipts during the three-
period.

Does that figure include the rentals for Feb-

(Testimony of Roy E. Hallberg.)

were received on the last day of—that we collect rents were for the month following or whether they were for that month and a little bit delinquent coming in.

Q. Mr. Hallberg, you operated on a cash receipts and disbursements basis, did you not?

A. Yes.

Q. Then this figure \$94,153.59 represents [61] actually received during the three-month period of the receivership, is that correct, sir?

A. That is correct.

Q. Do I understand your testimony to be that you cannot state definitely at this time whether the total includes the rents from the five apartment houses or one or more of them for February 27th and 28th?

A. No, it would be pretty hard to tell.

Mr. Whyte: I have no further questions for the direct examination of Mr. Hallberg, your Honor.

The Court: Then we will take a brief recess, which we will hear your expert witness, and then we will return to Mr. Hallberg for a cross examination.

Mr. Whyte: Thank you.

(Witness temporarily withdrawn.)

The Court: We will take a 10-minute recess.

(Short recess taken.)

Mr. Whyte: I have one or two short questions.

ROY E. HALLBERG

as a witness in his own behalf, having been duly sworn, resumed the stand and testified further as follows: [62]

Direct Examination—(Continued)

(By Mr. Whyte): Immediately before the I asked you whether or not the rents for February 26th, 27th and 28th were included in this receipts figure of \$94,153.59 shown on Schedule attached to your report, and I understood you to testify that you could not be certain whether they were included or were not included.

Calling your attention to a footnote on the second page of Schedule B, preceded by an asterisk and reading, "Receipts for the month of February in which were included only for 25 days", does that refresh your recollection as to whether or not February 26th, 27th and 28th receipts, rental receipts were included in the figure of Ninety Four Thousand Dollars?

The three days you refer to were not included in these figures, and the asterisk with the explanation there takes care of that. That was in order to explain it.

Whyte: All right. No further questions.

(Witness temporarily withdrawn.)

Whyte: Mr. Jefferson Mann.

(Testimony of Jefferson A. Mann.)

The Clerk: Please be seated. Your full sir.

The Witness: Jefferson A. Mann. [63]

Direct Examination

Q. (By Mr. Whyte): Where do you reside, Mann? A. In Glendale, California.

Q. What is your business address?

A. 624 Security Building, 510 South S Street, Los Angeles.

Q. In what business are you engaged?

A. I am a licensed real estate broker and estate appraiser.

Q. For how long have you been engaged in the State of California in real estate sales or activities connected with real estate?

A. Since 1933, which is 21 years, with the exception that prior to that time I engaged in real estate activities on my own account.

Q. Were you at any time ever connected with R. A. Rowan & Co.? A. I was.

Q. What is R. A. Rowan & Co.? What is the nature of their business?

A. R. A. Rowan & Co. real estate company which has been operating for over 50 years. Their office is located in the Rowan Building at 5th and Spring Streets, Los Angeles. Their principal business is the sale, leasing, management and [64]

mony of Jefferson A. Mann.)

me properties of all kinds, and industrial. Are you able to tell us how R. A. Rowan companies in size with other real estate companies in the city?

To the best of my knowledge they are the management company, real estate management company in the West. I think they are second in the volume of sales and leases in the

When did you join that organization?

July 15, 1933.

For how long did you remain in their employment?

Until September of 1953, with two exceptions. In 1937 I was hired by the General Petroleum Corporation, in their Real Estate Department, for special activity. And in 1939 I returned again to Rowan & Co.

In 1942 I was loaned to the United States Government, U. S. Corps of Engineers, Real Estate Section, for the purpose of acquiring various properties for use of the Army during the war period. I returned to Rowan & Co. in December of 1945 and continued there until I went into my own business in September of 1953. [65]

What was the nature of your duties while you were employed by Rowan & Co.?

(Testimony of Jefferson A. Mann.)

activities were the sale, leasing and appraising real property.

Q. Can you tell us some of the concerns to whom you sold or appraised or leased real property in this area?

A. I have appraised property for various government bodies, such as the Federal Housing Authority, United States Government, State of California, both the Highway Division and Finance Division, Corporation Commissioner, the R.F.C. University of California.

I have appraised property for and appeared before the Income Tax Division, testified in the Superior Court, Federal Court, appraised property for the Los Angeles Realty Board, Chamber of Commerce, American Red Cross and various banks such as Security Bank, Citizens National Trust Savings Bank, Trust Department, and for the bank itself, and Farmers & Merchants Bank, Wells Fargo and Union Trust Company of San Francisco. I have appraised for various oil companies, such as the General Petroleum, Texaco, MacMillan Petroleum, Fullerton Oil, Century Oil, various railroads and appraised for many corporations.

I have leased or sold to many corporations. I have [66] been appointed by Superior Court referee, by Superior Court Judge Thurman Clarke. I have appraised various estates, such as the banking estate of William A. Garland and

mony of Jefferson A. Mann.)

I have appraised land and properties for
odeo Land & Water Company of Beverly
the Janss Investment Company of Beverly
the Janss Real Estate Company and the Auto
of Southern California, and many, many

You mentioned that from about '42 to 1944
were with the United States Army Engineers
Real Estate Division?

That is correct.

What type of service did you perform for

The acquisition for use by the U. S. Govern-
f all types of government land in southern
nia, south of San Luis Obispo, Arizona, Ne-
nd as far south as the Mexican line in Ari-
nd in California. That constituted all types
properties, from airport landing fields to small
use of barracks or balloon sites, large ware-
all types of properties.

Are you familiar with apartment buildings,
ann? A. I am.

What has been your experience with them?

I have sold large apartments. I have ap-
a [67] number of them.

Mr. Mann, please assume the following facts:

November 30, 1953, by order of this court,

. Hallberg was appointed Receiver of all

(Testimony of Jefferson A. Mann.)

faithful discharge of his duties as Receiver. On about the same date he took possession of the following properties constituting the principal assets of the former Richman Trust, to wit: five apartment houses, being the Canterbury Apartment Hotel located in Hollywood, California, and the Fountain Manor Apartment Hotel, the Oliver Cromwell Apartment Hotel, the Western Arms Apartment Hotel and the La Loma Apartment Hotel, all located in Los Angeles, California.

The Canterbury Apartment Hotel contains 91 individual apartments whose rents range from approximately \$65.00 to \$175.00.

The Fountain Manor Apartment Hotel contains 91 individual apartments whose rents range from approximately \$65.00 to \$135.00.

The Oliver Cromwell Apartment Hotel contains 94 individual apartments whose rents range from approximately \$45.00 to \$115.00.

The Western Arms Apartment Hotel contains 91 individual apartments whose rents range from approximately \$50.00 to [68] \$95.00.

The La Loma Apartment Hotel contains 50 individual apartments whose rents range from approximately \$45.00 to \$57.50. The fair market value of these five apartment buildings is approximately \$1,200,000.00.

A brief summary of the Receiver's education and previous business experience is as follows:

mony of Jefferson A. Mann.)

ree. During the year 1931 he managed from 10 buildings of different types ranging from small houses up to large apartment buildings, the largest being an apartment hotel containing 600 apartments, in connection with the administration of the receivership in Chicago, Illinois.

He was later employed for a number of years with the Garrett Company in New York, who are fruit growers and vintners, their principal office being located in New York, N. Y. During the last four or five years of his employment with this company, which ended on or about January 1, 1948, he occupied the post of Eastern Sales Manager and received a net compensation of \$40,000.00 per year.

Immediately after January 1, 1948, he came to southern California where he has resided continuously to the present date. While living in southern California he has owned and actively engaged in the management of apartment houses and [69] other real estate properties located in this area. He has been engaged in various business ventures while living in southern California.

Hallberg's tenure of office as Receiver of all real and personal properties constituting the Richman Trust continued from on or about October 1, 1953 to and including February 28, 1954.

(Testimony of Jefferson A. Mann.)

manager operating under the Receiver's direction. These managers received their compensation from the receivership assets. The Receiver also employed a full time bookkeeper in connection with the operations of the former Richman Trust, who was paid a monthly salary from the former trust assets.

The Receiver was also assisted by his wife, Hallberg, who collected the rents from each of the five apartment buildings at least three times a month and deposited them in the Receiver's bank account. Her duties also included supervising the repair and decorating of the individual apartments. Mrs. Hallberg received no compensation from the estate. She is a graduate of the University of Minnesota, and in the early 1940's was one of the women investment counselors in New York, and She also holds a real estate broker's license in California. [70]

Throughout the three-month period of the receivership, the Receiver was responsible for the employment and discharge of receivership personnel. In this regard, in February, 1954, he discharged the bookkeeper first employed by him and hired a new bookkeeper. He was likewise charged with the duty of planning the accumulation of monies from receivership properties to meet substantial current obligations such as taxes and insurance premiums.

During the course of his term of office as Receiver, he reviewed all types of insurance policies

ony of Jefferson A. Mann.)

verage, thereby obtaining for the trust a
t of 10 per cent on the standard rate of the
urance policy covering the Oliver Cromwell,
20 per cent-25 per cent dividend at the ex-
a of this policy.

a time to time he inspected the various
ent buildings, paying particular attention to
lers, refrigeration systems, water heaters,
nts, etc. In this connection he supervised a
repair of the refrigeration equipment in the
n Arms, and selected a new concern to sup-
rigration service at this apartment hotel.
o made decisions respecting the proper
of upkeep and/or replacement of plumbing
Fountain Manor.

supervised the establishment of a new ac-
g system for the above mentioned apart-
uildings, and [71] instructed the bookkeeper
proper method of maintaining this system
nts. During the course of the receivership,
uently actively assisted in the bookkeeping

ne occasion he petitioned this court for au-
to pay Christmas bonuses to employees of
mer Richman Trust, which said petition was
. On another occasion he petitioned this
or authority to renovate individual apart-

(Testimony of Jefferson A. Mann.)

limited program of renovating individual
ments.

In order to determine whether the rentals charged at the various apartment buildings adequate, he surveyed the areas in the neighborhood of the Western Arms, Oliver Cromwell Fountain Manor to determine the comparative being charged in nearby apartment buildings.

In order properly to prepare a fiduciary income tax return covering the former trust property conferred with employees of the Director of Internal Revenue regarding the tax status of the former Richman Trust, and assisted the bookkeeper in preparing such return.

During the three-month period of the receivership, the gross income from the receivership was approximately [72] \$95,000.00.

On the basis of these facts, do you have an opinion, Mr. Mann, as to the reasonable value of Receiver's services in connection with his administration of the business and affairs of the former Richman Trust? A. I do.

Q. What is your opinion?

Mr. Enright: Pardon me just a minute, please. To which objection is made, first, upon the ground that the subject matter is not one of expert opinion?

Secondly, upon the ground that the witness

mony of Jefferson A. Mann.)

testified to no experience of his own, to the
ment of similar properties.

ly, the hypothetical question misstates much
vidence as of this time.

Court: The hypothetical question, I think, is
y phrased. Of course, there might be dif-
facts put in a different hypothesis, or some
facts herein stated left out, but that would
your hypothetical question, Mr. Enright.

witness, I don't think, has stated sufficient
rity with the compensation usually paid for
of this particular character. He has told us
with [73] Rowan & Co., that Rowan & Co.
a highly diversified type of property, and we
from just acquaintance in the community,
ey handle properties of the character that
olved here.

whether this witness has any knowledge of
es are charged for the handling of proper-
the type named here, when they are handled
van & Co. or by others, I don't think we
en told.

nk you had better lay a little further found-
that respect.

as to the objection to this as being not a
for expert testimony, we are confronted
e problem that an officer of the court, acting
ceiver, acts on a different basis than a per-

(Testimony of Jefferson A. Mann.)

sated as fully as if he were in private service. ever, what is paid in private service is one of the things to be considered by the court in determining what the compensation should be.

So the objection is provisionally sustained. If it is sustained only as to the inadequacy of the foundation.

Mr. Enright: May I take the witness on direct, as to his qualifications on the particular subject matter?

The Court: Yes. Let's have Mr. Whyte state out what he [74] wishes to, and you can cross-examine on that particular phase before he answers the question.

Q. (By Mr. Whyte): Mr. Mann, what familiarity, if any, do you have with the compensation paid in this area for property management, particularly with reference to apartment hotels?

Mr. Enright: Objection is made upon the ground that his familiarity does not qualify him to express an opinion. His experience in the field might be a proper question.

The Court: Overruled.

The Witness: I have on many occasions estimated the rental—the management schedule—put in force on various properties, not only those handled by Rowan & Co., but I have been in many other properties of which I have been requested and hired to give compensation to appraise.

mony of Jefferson A. Mann.)

r the management of similar types of prop-

ently was personally responsible for bring-
to Rowan & Co., and negotiated contracts
management of property of an income resi-
character, not as large an apartment, but a
apartment.

y sales experience it was necessary to deter-
ne net incomes of apartments, and in the
of determining those sources of net income
necessary to have [75] all of the facts of
as paid to managers, to operators, to resi-
operators of apartment houses of this char-

(By Mr. Whyte): Do you know whether
the Los Angeles Realty Board has a schedule
agement fees for property of this type?

They have.

Are you familiar with those schedules?

I am.

Do you have with you the most recent sched-
ed by the Los Angeles Realty Board?

I have.

With regard to management fees for apart-
mildings? A. I have.

Directing your attention to the handbook

(Testimony of Jefferson A. Mann.)

can you tell me approximately when that handbook was issued? A. December 1, 1952.

Q. And are you able to state whether or not this is the latest handbook put out by the Los Angeles Realty Board covering those subjects?

A. To the best of my knowledge it is the latest book. [76] I am a member of the Realty Board and am advised of these things, but this is the schedule I have received.

Q. Will you turn to the page in that handbook which deals with the commissions for property management of such buildings as apartment hotels?

A. (Witness complies) The schedule as set forth for management of property fees for business properties, including hotel apartment houses and low cost court buildings appears on page 13.

Mr. Whyte: I submit that a sufficient foundation has been laid now for the hypothetical question I put to this expert witness.

The Court: All right. Mr. Enright wants to question him before he answers.

You may do so.

Voir Dire Examination

Q. (By Mr. Enright): Is there any uniformity, Mr. Mann, in the nature of the services rendered by the property managers?

A. It varies according to circumstances.

Q. Some managers would furnish complete

mony of Jefferson A. Mann.)

And some managers would furnish complete keeping records and others would not? [77]

Well, they all furnish bookkeeping records. They are all charged with producing monthly reports on all management property. That is part of the duties of a manager.

And the manager pays for that service himself? The personnel in performing that service, in making the monthly report?

Not necessarily, no.

Well, is there any uniformity at all as to the way they pay for that?

No, sir, there is not. It depends on the negotiating contract.

You personally, I assume, have not acted as property manager yourself at any time?

No, sir, I personally have not been charged with the operation of apartment houses. I was a partner in which there were two apartment houses in receivership. It was one of my duties to know the facts and conditions surrounding that receivership.

That was that particular case involving that particular two apartment houses and the activities of the persons interested in the apartment houses, was that right?

That was the one time I was directly involved in

(Testimony of Jefferson A. Mann.)

business is that of managing of property, apartment house property, [78] known as certified property managers?

A. No, I do not know that concern.

Q. Certified property managers?

A. No, I do not know that concern, sir.

Q. Well, there is a board or a group of people who carry on that business in Los Angeles and in various parts of the United States that are certified as being qualified property managers? Are you familiar with that fact?

A. I am familiar with the Los Angeles Apartment House Managers Association, of which David Culver, a close personal business associate, was formerly the president. Mr. Sid Beach, I believe, is the president at the present time. That is the association I know of here.

I don't think I answered your question fully. I don't know the concern that you mentioned.

Q. Now, are you familiar at all with whether or not there is any uniformity of the services that are rendered by the apartment house property managers?

A. To a degree, there is a uniform service rendered. It is modified, depending on the particular circumstances.

Fundamentally, the services rendered are uniform to this degree: It is the duty of the manager to maintain the property in the best of the

ony of Jefferson A. Mann.)

decision for what should be done on the management of that property.

the province of a manager to see the bills paid. Those are all uniform. It is proper function of a manager on a uniform basis to see that departments are maintained in proper condition, they must—that the functions of the building go on, such as refrigeration, elevator service, janitor service, if any, heating and those types of services.

They are more or less standard. It comes into a separate entity and an additional function when a manager is required to possibly handle the financial end. I mean by that renegotiation of contracts, renegotiation of loans, making major decisions as to alterations, and the function of preparing tax returns and other entities that become an additional function over the standard operations. Now, this realty board document you have before you, sir, on page 13, refers only to fees for managing apartment houses, and it specifies a particular percentage, doesn't it?

What does, sir.

Now, that percentage specified there covers the service of the property manager in collecting rents, doesn't it?

A. Yes.

And he bears the expense of collecting those

[801] A. That is correct.

(Testimony of Jefferson A. Mann.)

Q. And he bears the expense of negotiating contracts for the painting or the decorating apartments?

A. Not necessarily, Mr. Enright.

Q. Then will you explain, sir, what is the amount specified there, 5 percent for the property manager?

A. The minimum charge of 5 percent on monthly rents collected, where the collections exceed \$2,000.00 per month. Part B, "Where monthly rentals from the single tenants or the average monthly rentals from two or more tenants in the same building is over \$2,000.00, the charge shall be 3 percent."

Q. There is nothing in the book there that specifies what service will be rendered, though, for 5 percent or that 5 percent, is there?

A. That is correct, sir.

Q. Have you any knowledge of any rule or regulation setting up these standards of ethics, and what service will be rendered?

A. I have negotiated, as I said before, contracts between property owners and management companies, such as Rowan & Co. I have made studies of those contracts in [81] the course of my work in appraising various properties.

I have discussed the matter with management companies, other than Rowan & Co., as, for example, Bentler Management Company and as-

ony of Jefferson A. Mann.)

s it your opinion that the 3 percent for col-
in excess of \$2,000.00 a month is reasonable
going rate?

Whyte: Well, now, I submit that is going
voir dire. The voir dire was supposed to
en——

Court: It is, yes.

Enright: Then I renew my objection.

Court: May I ask a question? Are different
charged for short term than for long term
ment, as, for instance, in this case that the
s now considering, we have an exact four
term.

d there be a different rate within the calling
short term, such as four months, than there
e for an annual or bi-annual contract, some-
e that kind?

Witness: There would be, your Honor, for
nite reason that the cost of setting up the
on to handle properties such as we are talk-
ut in this case is rather heavy. They have
n men, they have to set up their bookkeep-
tem, they have to enter all their records,
s quite an elaborate thing to accomplish. [82]
few concerns would be very much interested
t terms unless the compensation was com-
ate with a short term rather than a long
eration, because they would have to recover

(Testimony of Jefferson A. Mann.)

they were something I thought if I didn't ask I might forget. I would rather like to know your practice in the vocation in regard to this.

Now, proceed to your questioning.

Mr. Whyte: I renew the long hypothetical question which I asked before, and submit that the witness' qualifications as an expert have been laid sufficiently so he ought to be able to express his opinion as to the reasonable value of the Receiver's services in connection with his administration of the business and affairs of the former Richman Trust.

The Court: Do you have that question in mind?

The Witness: I do, your Honor.

The Court: You have a copy before you?

The Witness: Yes.

The Court: You had seen it before you came here today?

The Witness: I did, sir.

The Court: You may answer.

The Witness: In my opinion, the reasonable value of the Receiver's services in connection with his administration of the business and affairs of the former Richman Trust, in [83] my opinion is ten percent.

The Court: Of what?

The Witness: Of the gross income from